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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 29

[TB-90-004]

Tobacco Inspection; Burley Tobacco Grade Standards

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: These regulations amend the Official Standard Grades for Burley Tobacco to more accurately describe tobacco as it presently appears at the marketplace. This amendment will add two new grades to accommodate green immature tobacco in the Mixed (M) group. These amendments were based on the Department's continuous review and evaluation to determine the adequacy and clarity of current grade standards.

EFFECTIVE DATE: November 5, 1990.

FOR FURTHER INFORMATION CONTACT: Director, Tobacco Division, Agricultural Marketing Service, United States Department of Agriculture (USDA), P.O. Box 96456, Washington, DC 20090-6456. Telephone (202) 447-2567.

SUPPLEMENTARY INFORMATION: A notice was published July 2, 1990, (55 FR 27249) that the Department was considering a modification of the Official Standard Grades for Burley Tobacco, U.S. Type 31 and Foreign Type 93, pursuant to the authority contained in the Tobacco Inspection Act of 1935, as amended (49 Stat. 731; 7 U.S.C. 511 *et seq.*).

Interested parties were provided 30 days to comment on the proposed rule. One comment was received which supported the proposal in its entirety.

The following modifications were proposed: (1) To add new grades M4G and M5G to describe lots of tobacco containing over 20 percent of green immature tobacco in the Mixed (M) Group, and (2) revise the applicable rule (Rule 18) pertaining to tobacco containing 20 percent or more of green immature leaves so that it would apply to lots of tobacco in the M group.

This final rule has been reviewed under USDA procedures established to implement Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be "nonmajor" because it does not meet any of the criteria established for major rules under the Executive Order. Initial review of the regulations contained in 7 CFR part 29 for need, currentness, clarity, and effectiveness has been completed.

Additionally, in conformance with the provisions of Public Law 96-354, the Regulatory Flexibility Act, full consideration has been given to the potential economic impact on small business. A number of firms which would be affected by this final rule do not meet the definition of small business either because of their individual size or because of their dominant position in one or more marketing area. The Administrator, Agricultural Marketing Service, has determined that this action would not have a significant economic impact on a substantial number of small entities. This change would not affect the normal movement of the commodity in the marketplace. Compliance with this revision would not impose substantial direct economic costs, recordkeeping, or personnel workload changes on small entities, and it would not alter the market share or competitive positions of small entities relative to large entities.

Therefore, after consideration of comments on the proposal and other relevant information, the Department hereby adopts the regulations as proposed.

Lists of Subjects in 7 CFR Part 29

Administrative practice and procedure, Advisory committees, Government publications, Imports, Pesticides and pests, Reporting and recordkeeping requirements, Tobacco.

Accordingly, the Department hereby amends the regulations in 7 CFR part 29, subpart C, as follows:

PART 29—[AMENDED]

1. The authority citation for part 29, subpart C, continues to read as follows:

Authority: 7 U.S.C. 511b, 511m, and 511r.

2. Section 29.3121 is revised to read as follows:

§ 29.3121 Rule 18.

Any lot of tobacco containing 20 percent or more of green leaves, or any lot which is not crude but contains 20 percent or more of green and crude combined, shall be designated by the color symbol "G" in the X, C, and M groups and the combination color symbol "GF" and "GR" in the B and T groups.

§ 29.3155 [Amended]

3. Section 29.3155 is amended to add at the end of the table thereof:

Grades	Grade names and specifications
M4G	Fair Green Mixed. General quality of X4, C4, B4, and T4, heavy to tissuey body, immature, and 20 percent injury tolerance.
M5G	Low Green Mixed. General quality of X5, C5, B5, and T5, heavy to tissuey body, immature, and 30 percent injury tolerance.

Dated: October 1, 1990.

Daniel Haley,

Administrator.

[FR Doc. 90-23502 Filed 10-3-90; 8:45 am]

BILLING CODE 3410-02-M

Farmers Home Administration

7 CFR Part 1950

Servicing Accounts of Borrowers Entering the Armed Forces

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulations regarding reference to loan servicing notices. This action is needed because existing regulations refer to obsolete loan servicing notices. This action will result in consistency between regulations.

EFFECTIVE DATE: October 4, 1990.

FOR FURTHER INFORMATION CONTACT: Ann Eggleston, Guaranteed Loan Servicing and Property Management Branch, Farmers Home Administration,

USDA, room 5444, Washington, DC, telephone: (202) 475–4009.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291, and has been determined to be nonmajor because there will not be an annual effect on the economy of $100 million or more. There will not be a major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, nor will there be significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Programs Affected

These changes affect the following FmHA programs as listed in the catalog of Federal Domestic Assistance:

10.401—Emergency Loans
10.406—Farm Operating Loans
10.407—Farm Ownership Loans
10.410—Low Income Housing Loans (Section 502 Rural Housing Loans)
10.416—Soil and Water Loans

Intergovernmental Consultation

For the reasons set forth in the final rule related to Notice 7 CFR 3015, subpart V (48 FR 29115, June 24, 1983) and FmHA Instruction 1940–J, "Intergovernmental Review of Farmers Home Administration Programs and Activities" (December 34, 1983), Emergency Loans, Farm Operating Loans, and Farm Ownership Loans are excluded, with the exception of non-farm enterprise activity, from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

The Soil and Water Loan Program is subject to the provisions of Executive Order 12372 and FmHA Instruction 1940–J.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969 (Pub. L. 91–190), an Environmental Impact Statement is not required.

Background

The Agricultural Credit Act of 1987 (Pub. L. 100–233) requires a number of changes in the Farmers Home Administration (FmHA) regulations and how the agency will continue to do business with its Farmer Programs borrowers. The needed changes to subpart C of part 1950 were inadvertently not included in the **Federal Register** Publication (53 FR 35638–35798) dated Wednesday, September 14, 1988. However, sufficient notice to affected parties was given by this publication to encourage any necessary comments by the public. Furthermore, subpart S of part 1951 of this chapter specifically provides for all Farmer Programs loans to be serviced under that subpart. These changes will only affect Farmer Programs borrowers who have entered or are entering the military service. The changes are administrative and will require the County Supervisor to send the appropriate loan servicing notices to those borrowers who have entered or are entering the military and who are 180 days delinquent or otherwise defaulted on their FmHA loans. This revision is necessary to meet requirements of the Agricultural Credit Act of 1987. FmHA, for good cause, has found notice of proposed rulemaking unnecessary and impracticable with respect to this technical change, because the change is merely removing an inconsistency which was overlooked earlier. The change will have no effect on how the agency has been handling the program.

List of Subjects in 7 CFR Part 1950

Accounting, Loan programs—agriculture—military personnel.

Accordingly, title 7, chapter XVIII, Code of Federal Regulations is amended as follows:

PART 1950—GENERAL

1. The authority citation for part 1950 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart C—Servicing Accounts of Borrowers Entering the Armed Forces

2. Section 1950.103 is amended by revising the first sentence of paragraph (a)(2) to read as follows:

§ 1950.103 Borrower owing FmHA loans which are secured by chattels.

(a) * * *

(2) *Borrowers who owe FO, SW, RL, OL, EE, EM, SL, EO, and/or RHF loans.* If the borrower is delinquent in accordance with subpart S of part 1951 of this chapter, or otherwise in default, the County Supervisor will send exhibit A and the appropriate attachments, as outlined in subpart S of part 1951 of this chapter. * * *

* * * * *

3. Section 1950.104 is amended by revising the fourth sentence of the introductory text and the second sentence of paragraph (d) to read as follows:

§ 1950.104 Borrower owing FmHA loans which are secured by real estate.

* * * Borrowers who owe FO, SW, RL, OL, EE, EM, SL, EO, ST, and/or RHF loans and who are delinquent or otherwise in default must be sent exhibit A and the appropriate attachments, as outlined in subpart S of part 1951 of this chapter. * * *

* * * * *

(d) * * * Those borrowers should be sent exhibit A and the appropriate attachments as outlined in subpart S of part 1951 of this chapter. * * *

* * * * *

Dated: August 23, 1990.

Roland R. Vautour,

Under Secretary for Small Community and Rural Development.

[FR Doc. 90–23437 Filed 10–3–90; 8:45 am]

BILLING CODE 3410–07–M

UNITED STATES TRADE REPRESENTATIVE

15 CFR Parts 2011 and 2013

Allocation of Tariff-Rate Quota for Imports of Sugar

AGENCY: United States Trade Representative (USTR).

ACTION: Interim rule.

SUMMARY: Presidential Proclamation No. 6179 of September 13, 1990, 55 FR 38293, converted the U.S. sugar import quota into a tariff-rate quota, effective October 1, 1990. This Proclamation provided for the designation of certain amounts of sugars, syrups, and molasses described in subheadings 1701.11.01, 1701.12.01, 1701.91.21, 1701.99.01, 1702.90.31, 1806.10.41, and 2106.90.11 of the Harmonized Tariff Schedule of the United States (HTS), imported from foreign countries and areas specified in paragraph (b) of additional U.S. note 3 to chapter 17 of the HTS, to be imported subject to the lower duty rates (or duty free) of the tariff-rate quota.

This interim rule amends the regulations previously promulgated to implement the former absolute quota in

order to conform the regulations to the provisions of the HTS, as modified by Proclamation No. 6179. A Certificate of Quota Eligibility will be required in order for sugars, syrups or molasses to be entered under subheadings 1701.11.01, 1701.12.01, 1701.91.21, 1701.99.01, 1702.90.31, 1806.10.41, or 2106.90.11 of the HTS.

In addition, this interim rule makes numerous minor amendments to update or clarify former provisions. It also reissues the regulations previously promulgated under 7 CFR 6.90–6.93, "Allocations of Sugar Import Quotas for 'Other Specified Countries or Areas,' " to implement the transfer of this authority as proclaimed in Proclamation 6179. Specifically, because of the transfer of authority relating to allocations of sugar import quotas for "Other Specified Countries or Areas," Proclamation 6179 has the effect of rendering void, as of October 1, 1990, those regulations previously promulgated under 7 CFR 6.90–6.93, relating to allocations of sugar import quotas for "Other Specified Countries or Areas." The Secretary of Agriculture will publish a document in the Federal Register amending those regulations accordingly in the near future. This interim rule reissues the regulations under the authority of the United States Trade Representative.

DATES: Interim rule effective October 1, 1990; comments must be submitted on or before December 4, 1990.

ADDRESSES: Interested persons are invited to submit written comments concerning this interim rule. Comments should be mailed or delivered to Ellen Terpstra, Senior Economist, Agricultural Affairs (room 423), Office of the United States Trade Representative, Executive Office of the President, Washington, DC 20506. Comments received may also be inspected at room 423 between 10 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Ellen Terpstra (Senior Economist, Agricultural Affairs), 202–395–5006 or Richard Steinberg (Assistant General Counsel), 202–395–7305.

SUPPLEMENTARY INFORMATION: This interim rule has been reviewed under the United States Trade Representative's procedures implementing Executive Order 12291 and has been classified as "not major." It has been determined that the provisions of this interim rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) major increases in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises in domestic or export markets.

The United States Trade Representative certifies that this interim rule will not have a significant economic impact on a substantial number of small entities. Consequently, no regulatory flexibility analysis is required under the provisions of the Regulatory Flexibility Act (5 U.S.C. 601). It has been determined by an environmental evaluation that this action will not have any significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is necessary for this interim rule.

Pursuant to the Paperwork Reduction Act of 1980, we have asked for expedited clearance of the information collection requirements imposed by this rule under Office of Management and Budget control number 0551–0014. Comments on any burden resulting from the information collection requirements of this regulation may be forwarded to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. These programs are not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Background

Soon after the establishment of a restrictive import quota for sugars, syrups and molasses by Presidential Proclamation 4941 of May 5, 1982 (47 FR 19661), the United States Trade Representative promulgated regulations providing for the issuance of certificates of quota eligibility by foreign governments to implement the country-by-country allocations of the base quota and providing for the allocation of a separate quota for imports of specialty sugars.

Presidential Proclamation No. 6179 of September 13, 1990, 55 FR 38293, modified additional U.S. notes 3 and 4 of chapter 17 of the HTS and the tariff rates applicable to imported sugars, syrups, and molasses in order to convert the U.S. sugar import quota into a tariff-rate quota, effective October 1, 1990. This Proclamation provided for sugars, syrups, and molasses described in subheadings 1701.11.01, 1701.12.01, 1701.91.21, 1701.99.01, 1702.90.31, 1806.10.41, and 2106.90.11 of the HTS to enter the United States at the lower duty rates of the tariff-rate quota, subject to a quota allocated among supplying countries and areas. As in the past, the total quota amount and quota period will be established by the Secretary of Agriculture; the United States Trade Representative will allocate specific quota amounts to each country and area eligible to receive an allocation.

It has been determined that this interim rule is necessary and appropriate to implement additional U.S. Note 3 to chapter 17 of the HTS, as modified by Proclamation 6179. Because the tariff-rate quota takes effect on October 1, 1990, it is necessary to revise and republish existing regulations on an interim basis, pending public comments, in order to avoid serious disruptions in the trade of sugars, syrups, and molasses, and for other reasons.

Certificates of Quota Eligibility

The regulations previously set forth as 15 CFR part 2011 to provide for certificates of quota eligibility have been revised and republished as subpart A of 15 CFR part 2011. These regulations set forth the terms and conditions under which certificates of quota eligibility will be issued to Canada and to foreign countries which have been allocated a share of the U.S. tariff-rate quota for sugar imports.

Except for specialty sugars (which are covered by the regulations in the new subpart B of part 2011) and except as otherwise discussed below, imported sugars, syrups, and molasses will not be permitted to be entered or withdrawn from warehouse for consumption under subheadings 1701.11.01, 1701.12.01, 1701.91.21, 1701.99.01, 1702.90.31, 1806.10.41, or 2106.90.11 of the Harmonized Tariff Schedule of the United States (HTS), unless such sugars, syrups, and molasses are accompanied by a certificate of quota eligibility. Accordingly, all foreign countries and areas which have been allocated a share of the base quota must participate in the certificate of quota eligibility program. The U.S. Customs Service will classify sugar imported from such countries and areas to such subheadings of the HTS only if the sugar is accompanied by a certificate of quota eligibility. The certificate requirement will also apply to all sugars, syrups and molasses imported from Canada regardless of the HTS subheading applicable to such articles.

This interim rule debates the exceptions to the certificate requirements previously allowed by 15 CFR 2011.3(b) for *de minimis* amounts (less than 20 short tons) and by 15 CFR 2011.6(b)–(d) for imports from countries and areas not participating in the certificate program. The deletion of these exceptions is necessary because

the certificate will be used by the U.S. Customs Service to determine which imports may be classified to subheading 1701.11.1, 1701.12.01, 1701.19.21, 1701.99.01, 1701.90.31, 1806.10.41, or 2106.90.11 of the HTS. A limited exception is provided, as in the previous regulations, for waivers to be granted by the Secretary of Agriculture when a waiver is justified by unusual, unavoidable or otherwise appropriate circumstances, such as the loss or destruction of the certificate, unavoidable delays in transmittal of the certificate to the port of entry, and clerical errors in the execution or issuance of the certificate.

This interim rule also deletes the transitional provisions previously set forth in § 2011.9, which has become obsolete. Finally, changes in the authority citation, certain definitions, and other provisions have been made to conform to the modifications in additional U.S. note 3 to chapter 17 of the HTS and to remove obsolete references to the International Sugar Agreement, 1977, which has expired.

Specialty Sugars

The regulations previously set forth as 15 CFR part 2013 to provide for the issuance of specality sugar certificates have been revised and republished as subpart B of 15 CFR part 2011. These regulations set forth the terms and conditions under which specialty sugar certificates will be issued to U.S. importers for importing specialty sugars under the lower duty rates of the tariff-rate quota from countries set forth in additional U.S. note 3(b)(i) to chapter 17 of the HTS. These "other specialty sugar source countries" are Belgium, Burma, Cameroon, Denmark, Federal Republic of Germany, France, Hong Kong, Indonesia, Ireland, Itlay, Japan, Kenya, Luxembourg, Netherlands, Netherlands Antilles, People's Republic of China, Republic of Korea, Republic of Yeman, Surinam, Sweden, Switzerland, United Kingdom, and Venezuela.

Specialty sugars imported from these countries will not be permitted to be entered under subheadings 1701.11.01, 1701.12.01, 1701.19.21, 1701.99.01, 1702.90.31, 1806.10.41, or 2106.90.11 of the HTS unless accompanied by a specialty sugar certificate issued by the Team Leader for Import Quota Programs of the U.S. Department of Agriculture's Foreign Agriculture Service (FAS). Accordingly, all importers of specialty sugars from foreign countries and areas which have been allocated a share of specialty sugar must participate in the specialty sugar certificate program. The U.S. Customs Service will classify specialty sugar imported from such countries and areas to such subheadings of the HTS only if the specialty sugar is accompanied by a specialty sugar certificate.

The only substantial change made by this interim rule to the previous regulations in part 2013 involves the definition of specialty sugars. The former definition in 15 CFR 2013.2(i) included as an element that the specialty sugars not be "currently commercially produced in the United States or reasonably available from domestic sources." This limitation has been replaced with a specific list of the products traditionally considered to be specialty sugars. The list includes brown slab sugar (also known as slab sugar candy), pearl sugar (also known as perl sugar, perle sugar, and nibs sugar), vanilla sugar, rock candy, demerara sugar, silver dragees for cooking and baking, white fondant (a creamy blend of sugar and glucose), ti light sugar (99.2% sugar with the residual comprised of the artificial sweeteners aspartame and acesulfame K), caster sugar, golden syrup, and frediana granella grossa. These products must also be classifiable to subheadings 1701.11.01, 1701.12.01, 1701.19.21, 1701.99.01, 1702.90.31, 1806.10.41, or 2106.90.11 of the HTS, be the product of a country listed among the "other specialty sugar source countries," and require no further refining, processing, or other preparation prior to consumption, other than incorporation as an ingredient in human food.

In addition, changes in the authority citation, certain definitions, and other provisions have been made to conform to the modifications in additional U.S. note 3 to chapter 17 of the HTS and to remove obsolete references to the International Sugar Agreement, 1977, which has expired.

"Other Specified Countries and Areas"

The regulations previously promulgated by the Secretary of Agriculture and set forth in 7 CFR 6.90–6.93 to provide for allocations of the former absolute quota to the "other specified countries and areas" have been revised and republished as subpart C of 15 CFR part 2011. These regulations set forth the manner in which individual sugar import tariff-rate quota allocations will be calculated for those countries listed as "Other specified countries and areas" in paragraph (b)(i) of additional U.S. note 3 to chapter 17 of the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202). These countries and areas are: Congo, Cote d'Ivoire, Gabon, Haiti, Madagascar, Mexico, Papua-New Guinea, Paraguay, Saint Christopher-Nevis, and Uruguay.

Proclamation No. 6179 transferred authority from the Secretary of Agriculture to the United States Trade Representative to promulgate regulations providing for such minimum allocation amounts as may be appropriate to provide reasonable access to the U.S. sugar market to these countries. Changes have been made to the authority citation and other provisions to conform to the modifications in additional U.S. note 3 to chapter 17 of the HTS, and the final two sentences of former § 6.93 have been deleted because they were in conflict with the first sentence.

List of Subjects in 15 CFR Part 2011

Allocations for "Other Specified Countries and Areas", Certificates of Quota Eligibility, Imports, Specialty sugars, Sugar.

Accordingly, 15 CFR is amended to read as follows:

1. Part 2011 is revised to read as follows:

PART 2011—ALLOCATION OF TARIFF-RATE QUOTA ON IMPORTED SUGARS, SYRUPS AND MOLASSES

Subpart A—Certificates of Quota Eligibility

Sec.

Subpart B—Specialty Sugar

Subpart C—Allocations for "Other Specified Countries and Areas"

Authority: Presidential Proclamation No. 6179, September 13, 1990 (55 FR 38293); additional U.S. note 3 to chapter 17 of the Harmonized Tariff Schedule of the United States (HTS) (19 U.S.C. 1202).

Subpart A—Certificate of Quota Eligibility

§ 2011.101 General statement.

This subpart sets forth the terms and conditions under which certificates of quota eligibility will be issued to foreign countries which have been allocated a share of the U.S. sugar tariff-rate quota. Except for specialty sugars covered by the regulations in subpart B of this part and except as otherwise provided in this subpart, sugars, syrups, and molasses described in subheadings 1701.11.01, 1701.12.01, 1701.91.21, 1701.99.01, 1702.90.31, 1806.10.41, or 2106.90.11 of the Harmonized Tariff Schedule of the United States (HTS), imported from a foreign country, may not be entered or withdrawn from warehouse for consumption under such HTS subheadings unless such sugars, syrups, or molasses are accompanied by a certificate of quota eligibility. It has been determined that these regulations are necessary and appropriate to implement additional U.S. note 3 to chapter 17 of the HTS.

§ 2011.102 Definitions.

Unless the context otherwise requires, for the purpose of this subpart, the following terms shall have the meanings assigned below.

(a) *Additional U.S. note 3* means additional U.S. note 3 to chapter 17 of the HTS, including any amendments thereto.

(b) *Appropriate customs official* means the district or area Director of the U.S. Customs Service, his or her designee, or any other customs officer of similar authority and responsibility for the customs district in which the port of entry is located.

(c) *Certificate of quota eligibility* or "certificate" means a certificate issued by the Secretary to a foreign country or area which, when duly executed and issued by the certifying authority of such foreign country or area, authorizes the entry into the United States of sugar produced in such country under subheadings 1701.11.01, 1701.12.01, 1701.91.21, 1701.99.01, 1702.90.31, 1806.10.41, or 2106.90.11 of the HTS.

(d) *Certifying authority* means a person designated by the government of a foreign country who is authorized to execute and issue certificates of quota eligibility on behalf of such foreign country.

(e) *Entry* means entry, or withdrawal from warehouse, for consumption in the customs territory of the United States.

(f) *Foreign country* means any of the following foreign countries or areas: Argentina, Australia, Barbados, Belize, Bolivia, Brazil, Canada, Columbia, Congo, Costa Rica, Cote d'Ivoire, Dominican Republic, Ecuador, El Salvador, Fiji, Gabon, Guatemala, Guyana, Haiti, Honduras, India, Jamaica, Madagascar, Malawi, Mauritius, Mexico, Mozambique, Nicaragua, Panama, Papua-New Guinea, Paraguay, Peru, Philippines, Saint Christopher-Nevis, Swaziland, Taiwan, Thailand, Trinidad-Tobago, Uruguay, and Zimbabwe.

(g) *Licensing Authority* means the Team Leader, Import Quota Programs, Import Policies and Trade Analysis Division, Foreign Agricultural Service, U.S. Department of Agriculture, or his or her designee.

(h) *Person* means an individual, partnership, corporation, association, estate, trust, or other legal entity, and, wherever applicable, any unit, instrumentality, or agency of a government, domestic or foreign.

(i) *Quota* means any tariff-rate quota on imports of sugars, syrups or molasses described in subheadings 1701.11.01, 1701.12.01, 1701.91.21, 1701.99.01, 1702.90.31, 1806.10.41, and 2106.90.11 of the HTS established and allocated pursuant to the provisions of paragraphs (a) and (b) of additional U.S. note 3 to chapter 17 of the HTS.

(j) *Quota period* means any period of time for which a quota for imports of sugar has been established in accordance with additional U.S. note 3.

(k) *Raw value* means, for a given quantity of sugar, the equivalent of that quantity of sugar in terms of ordinary commercial raw sugar testing 96 degrees by the polariscope as determined in accordance with regulations issued by the Secretary of the Treasury.

(l) *Secretary* means the Secretary of Agriculture or any officer or employee of the Department of Agriculture to whom the Secretary has delegated the authority or to whom the authority hereafter may be delegated to act in the Secretary's place.

(m) *Sugar* means sugar, syrups, and molasses described in subheadings 1701.11.01, 1701.12.01, 1701.91.21, 1701.99.01, 1702.90.31, 1806.10.41, or 2106.90.11, but does not include specialty sugars as defined in subpart B of this part, or, in the case of "sugar" which is the product of Canada, means sugar, syrups, and molasses described in subheadings 1701.11.02, 1701.11.03, 1701.12.02, 1701.91.22, 1701.99.02, 1702.90.32, 1806.10.42, or 2106.90.12 of the HTS, which is the product of Canada, but does not include specialty sugars as defined in subpart B of this part.

§ 2011.103 Entry into the United States.

(a) *General.* Except as otherwise provided herein (see §§ 2011.104 and 2011.109), no sugar described in subheadings 1701.11.01, 1701.12.01, 1701.91.21, 1701.99.01, 1702.90.31, 1806.10.41, or 2106.90.11 of the HTS, which is the product of a foreign country or area, may be entered or withdrawn from warehouse for consumption after 12:01 a.m. October 1, 1990 unless at the time of entry the person entering such sugar presents to the appropriate customs official a valid and properly executed certificate of quota eligibility for such sugar. Except as otherwise provided herein (see §§ 2011.104 and 2011.109), no sugar described in subheadings 1701.11.02, 1701.11.03, 1701.12.02, 1701.91.22, 1701.99.02, 1702.90.32, 1806.10.42, or 2106.90.12 of the HTS, which is the product of Canada, may be entered or withdrawn from warehouse for consumption after 12:01 a.m. October 1, 1990 unless at the time of entry the person entering such sugar presents to the appropriate customs official a valid and properly executed certificate of quota eligibility for such sugar.

(b) *Determinations of weight.* (1) For purposes of determining the amount of sugar which may be entered into the United States under a certificate of quota eligibility, sugar shall be entered on the basis of the actual weight of the sugar, as determined by the appropriate customs official. No adjustments in weight shall be made for the differences in polarization.

(2) The actual weight of the sugar entered into the United States may not exceed the weight specified on the certificate of quota eligibility by more than five percent. Such tolerance may be modified by the Secretary if the Secretary finds that such modification is appropriate to carry out the provisions of this subpart. Notice of any such modification shall be published by the Secretary in the **Federal Register**.

(3) The provisions of this paragraph shall not affect the manner in which the amount of sugar (raw value) entered into the United States is determined for purposes of administering the import quotas imposed under additional U.S. note 3 on sugar described in subheadings 1701.99.01, 1702.90.31, 1806.10.41, and 2106.90.11 of the HTS.

§ 2011.104 Waiver.

(a) *General.* The Secretary may waive, with respect to individual

shipments, any or all of the requirements of this subpart if he or she determines that a waiver will not impair the proper operation of the sugar quota system, that it will not have the effect of modifying the allocation of sugar made pursuant to the provisions of paragraph (b) of additional U.S. note 3 to chapter 17 of the HTS, and that such waiver is justified by unusual, unavoidable, or otherwise appropriate circumstances. Such circumstances include, but are not limited to, loss or the destruction of the certificate, unavoidable delays in transmittal of the certificate to the port of entry, and clerical errors in the execution or issuance of the certificate.

(b) *Request for waiver.* The request for a waiver must be made to the Secretary in writing. The request need not follow any specific format. However, the request should set forth in detail all pertinent information relating to the shipment in question and the basis upon which the waiver should be granted.

(c) *Issuance of waiver.* The Secretary shall notify, in writing, the applicant for the waiver and the Secretary of the Treasury of any waiver granted under the authority of this section. The Secretary may attach any terms, conditions or limitations to the waiver which he or she determines are appropriate.

§ 2011.105 Form and applicability of certificate.

(a) *Contents.* Each certificate shall be numbered and identified by the foreign country. The certificate shall state that the quantity specified on the certificate is eligible to be entered into the United States during the applicable quota period. The certificate shall provide spaces into which the following information must be inserted by the certifying authority of the foreign country: Quantity eligible to be entered; name of shipper; name of vessel; and port of loading. The following information, if known, may also be specified on the certificate by the certifying authority: name and address of consignee; expected date of departure; expected date of arrival in U.S.; and expected port(s) of arrival in the United States. The certificate shall also provide an area where the certifying authority of the foreign country shall affix a seal or other form of authentication and sign and date the certificate.

(b) *Other limitations.* The Secretary may attach such other terms, limitations, or conditions to individual certificates of quota eligibility as he or she determines are appropriate to carry out the purposes of this subpart, provided that such other terms, limitations, or conditions will not have the effect of modifying the allocation of sugar made pursuant to the provisions of paragraph (b) of additional U.S. note 3 to chapter 17 of the HTS. Such terms, limitations or conditions may include, but are not limited to, maximum quantities per certificate and a specified period of time during which the certificate shall be valid. In no event shall the maximum quantity per certificate exceed 10,000 short tons.

(c) *Applicability of the certificate.* The certificate of quota eligibility shall only be applicable to the shipment of sugar for which it was executed and issued by the certifying authority.

§ 2011.106 Agreements with foreign countries.

Agreements or arrangements providing for the certificate system may be entered into by the United States Government with the governments of foreign countries. Such agreements or arrangements may provide for the designation of certifying authorities, the designation of seals or other forms of authentication, the transmittal and exchange of pertinent information, and other appropriate means or forms of cooperation.

§ 2011.107 Issuance of certificates to foreign countries.

(a) *Amount and timing.* The Secretary may issue certificates of quota eligibility to foreign countries for any quota period in such amounts and at such times as he or she determines are appropriate to enable the foreign country to fill its quota allocation for such quota period in a reasonable manner, taking into account traditional shipping patterns, harvesting period, U.S. import requirements, and other relevant factors.

(b) *Adjustments.* The Secretary may adjust the amount of certificates issued to a certifying authority for any quota period, provided that such adjustment will not have the effect of modifying the allocation of sugar made pursuant to the provisions of paragraph (b) of additional U.S. note 3 to chapter 17 of the HTS, in order to reflect:

(1) The amount of sugar entered into warehouse during previous quota periods;

(2) Anticipated differences in actual weight and weight determined on a raw value basis; and

(3) Other relevant factors.

§ 2011.108 Execution and issuance of certificates by the certifying authority.

(a) *Execution.* The certificate of quota eligibility shall be executed by the certifying authority by:

(1) Entering on the certificate the information required under § 2011.105 of this subpart; and

(2) Affixing a seal or other form of authentication to the certificate.

(b) *Issuance.* The executed certificate shall be issued by the certifying authority to the shipper or consignee specified on the certificate.

(c) *Modifications by the certifying authority.* The terms and conditions set forth in the certificate may not be modified, added to, or deleted by the certifying authority without the prior written approval of the Secretary.

(d) A certificate shall not be considered valid unless it is executed and issued in accordance with this section.

§ 2011.109 Suspension or revocation of individual certificates.

(a) *Suspension or revocation.* The Secretary may suspend, revoke, modify or add further limitations to any certificate if the Secretary determines that such action or actions is necessary to ensure the effective operation of the import quota system for sugar and that such suspension, revocation, modification or addition of further limitations will not have the effect of modifying the allocation of sugar made pursuant to the provisions of paragraph (b) of additional U.S. note 3 to chapter 17 of the HTS.

(b) *Reinstatement.* The Secretary may reinstate or reissue any certificate which was previously suspended, revoked, modified, or otherwise limited under the authority of this section.

§ 2011.110 Suspension of certificate system.

(a) *Suspension.* The U.S. Trade Representative may suspend the provisions of this subpart whenever he or she determines that such action gives due consideration to the interests in the U.S. sugar market of domestic producers and materially affected contracting parties to the General Agreement on Tariffs and Trade. Notice of such suspension and the effective date thereof shall be published in the **Federal Register.**

(b) *Reinstatement.* The U.S. Trade Representative may at any time reinstate the operation of this subpart if he or she finds that the conditions set forth in paragraph (a) of this section no longer apply. Notice of such reinstatement and the effective date thereof shall be published in the **Federal Register.**

(c) *Transitional provisions.* In the case of any suspension or reinstatement of the certificate system established by

this subpart, the Secretary, in consultation with the United States Trade Representative, may prescribe such additional guidelines, instructions, and limitations which shall be applied or implemented by appropriate customs officials in order to ensure an orderly transition.

Subpart B—Specialty Sugar

§ 2011.201 General statement.

This subpart sets forth the terms and conditions under which specialty sugar certificates will be issued to U.S. importers for importing specialty sugars from countries set forth in additional U.S. note 3(b)(i) to chapter 17 of the Harmonized Tariff Schedule of the United States (HTS). Specialty sugars imported from such countries may not be entered under subheadings 1701.11.01, 1701.12.01, 1701.91.21, 1701.99.01, 1702.90.31, 1806.10.41, or 2106.90.11 of the HTS unless accompanied by a specialty sugar certificate. It has been determined that the regulations in this subpart are necessary and appropriate to implement authority conferred on the United States Trade Representative by additional U.S. note 3 to chapter 17 of the HTS. It has further been determined that these regulations give consideration to the interests in the U.S. sugar market of domestic producers and materially affected contracting parties to the General Agreement on Tariffs and Trade (GATT), and that these regulations are necessary and appropriate to assist in fulfilling U.S. obligations under the GATT.

§ 2011.202 Definitions.

Unless the context otherwise requires, for the purpose of this subpart, the following terms shall have the meanings assigned below.

(a) *Appropriate Customs official* means the District or Area Director of Customs, his or her designee, or any other Customs officer of similar authority and responsibility for the Customs district in which the port of entry is located.

(b) *Certificate* means a specialty sugar certificate issued by the Certifying Authority permitting the entry of specialty sugar as defined in this section.

(c) *Certifying Authority* means the Team Leader, Import Quota Programs, Foreign Agriculture Service, U.S. Department of Agriculture, or his or her designee.

(d) *Date of entry* means the date on which the appropriate Customs entry form is properly executed and deposited, together with any estimated duties and special import fees and any related documents required by law or regulation to be filed with such form at the time of entry with the appropriate Customs Officer.

(e) *Importer* means any person in the United States importing specialty sugar into the United States.

(f) *Person* means any individual, partnership, corporation, association, estate, trust, or any other business entity, and, whenever applicable, any unit, instrumentality, or agency, of a government, domestic or foreign.

(g) *Other specialty sugar source countries* means the following countries: Belgium, Burma, Cameroon, Denmark, Federal Republic of Germany, France, Hong Kong, Indonesia, Ireland, Italy, Japan, Kenya, Luxembourg, Netherlands, Netherlands Antilles, People's Republic of China, Republic of Korea, Republic of Yemen, Surinam, Sweden, Switzerland, United Kingdom, and Venezuela.

(h) *Quota* means any tariff-rate quota on imports of any sugars, sirups, or molasses provided for in subheadings 1701.11.01, 1701.12.01, 1701.91.21, 1701.99.01, 1702.90.31, 1806.10.41, and 2106.90.11 of the HTS applied under the authority of additional U.S. note 3 to chapter 17 of the HTS and any modifications thereto.

(i) *Secretary* means the Secretary of Agriculture or any officer of employee of the Department of Agriculture to whom the Secretary has delegated the authority or to whom the authority hereafter may be delegated to act in his place.

(j) *Specialty sugar* means brown slab sugar (also known as slab sugar candy), pearl sugar (also known as perl sugar, perle sugar, and nibs sugar), vanilla sugar, rock candy, demerara sugar, silver dragees for cooking and baking, white fondant (a creamy blend of sugar and glucose), ti light sugar (99.2% sugar with the residual comprised of the artificial sweeteners aspartame and acesulfame K), caster sugar, golden syrup, and ferdiana granella grossa, which in addition:

(1) Are sugars, syrups, or molasses described in subheadings 1701.11.01, 1701.12.01, 1701.91.21, 1701.99.01, 1702.90.31, 1806.10.41, or 2106.90.11 of the Harmonized Tariff Schedule of the United States.

(2) Are the product of a country listed among the "other specialty sugar source countries," and

(3) Require no further refining, processing, or other preparation prior to consumption, other than incorporation as an ingredient in human food.

§ 2011.203 Issuance of specialty sugar certificates.

(a) Specialty sugars imported into the United States from other specialty sugar source countries may be entered under subheadings 1701.11.01, 1701.12.01, 1701.91.21, 1701.99.01, 1702.90.31, 1806.10.41, or 2106.90.11 of the HTS only if such specialty sugars are accompanied by a certificate issued by the Certifying Authority.

(b) A certificate may be issued to an importer who complies with the provisions of this part. The certificate may contain such conditions, limitations or restrictions as the Certifying Authority, in his discretion, deems necessary. The Certifying Authority will issue a certificate if sufficient evidence has been provided to permit the Certifying Authority to make a reasonable determination that the sugar proposed to be imported under the certificate fits the definition of specialty sugars in this subpart.

(c) Subject to quota availability, an unlimited number of complying shipments may enter under a given certificate and a given certificate may cover more than one type of specialty sugar. Issuance of a certificate does not guarantee the entry of any specific shipment of specialty sugars under subheadings 1701.11.01, 1701.12.01, 1701.91.21, 1701.99.01, 1702.90.31, 1806.10.41, or 2106.90.11 of the HTS, but only permits entry of such sugar under such HTS subheadings if the applicable quota or quotas are not already filled.

§ 2011.204 Entry of specialty sugars.

An importer or his or her agent must present a certificate to the appropriate Customs official at the time of entry of specialty sugars. Entry of specialty sugars under subheadings 1701.11.01, 1701.12.01, 1701.91.21, 1701.99.01, 1702.90.31, 1806.10.41, or 2106.90.11 of the HTS shall be allowed only in conformity with the description of sugars and other conditions, if any, stated in the certificate.

§ 2011.205 Application for a specialty sugar certificate.

Applicants for certificates for the import of specialty sugars must apply in writing to the Certifying Authority. Such letter of application shall contain the following information:

(a) The name and address of the applicant;

(b) A statement of the anticipated quantity of specialty sugars to be imported, if known;

(c) The appropriate six digit HTS subheading number;

(d) A description of the specialty sugar the importer expects to import during the period of the certificate, including the manufacturer's or exporter's usual trade name or designation and use of such specialty sugar, and the importer's use of such specialty sugar;

(e) Sufficient evidence to permit the Certifying Authority to make a reasonable determination that such sugars are specialty sugars within the definition of specialty sugars in this subpart;

(f) The name of the anticipated consumer of the specialty sugars, if known at time of application; and

(g) The anticipated date of entry, if known at time of application.

The Certifying Authority may waive any provision of this section for good cause if her or she determines that such a waiver will not adversely affect the implementation of this subpart.

§ 2011.206 Suspension or revocation of individual certificates.

(a) *Suspension or revocation.* The Certifying Authority may suspend, revoke, modify or add limitations to any certificate which has been issued if he or she determines that such action or actions is necessary to ensure the effective operation of the quota for specialty sugars or determines that the importer has failed to comply with the requirements of this subpart.

(b) *Reinstatement.* The Certifying Authority may reinstate or restore any certificate which was previously suspended, revoked, modified or otherwise limited under the authority of this section.

(c) The determination of the Certifying Authority under paragraph (a) of this section that the importer has failed to comply with the requirements of this subpart may be appealed to the Director, Import Policy and Trade Analysis Division, Foreign Agriculture Service (FAS), U.S. Department of Agriculture, Washington, DC 20250, within 30 days from the date of suspension or revocation. The request for reconsideration shall be presented in writing and shall specifically state the reason or reasons why such determination should not stand. The Director, Import Policy and Trade Analysis Division, Foreign Agriculture Service (FAS), U.S. Department of Agriculture, Washington, DC 20250, will provide such person with an opportunity for an informal hearing on such matter. A further appeal may be made to the Administrator, FAS, U.S. Department of Agriculture, Washington, DC 20250, within five working days of receipt of the notification of the Director's decision. The Certifying Authority may take action under paragraph (b) of this section during the pendency of any appeal.

§ 2011.207 Suspension of the certificate system.

(a) *Suspension.* The U.S. Trade Representative may suspend the provisions of this subpart whenever he or she determines that the quota provided for in additional note 3 to chapter 17 of the HTS is no longer in force or that this subpart is no longer necessary to implement those provisions. Notice of such suspension and the effective date thereof shall be published in the Federal Register.

(b) *Reinstatement.* The U.S. Trade Representative may at any time reinstate the operation of this subpart if he or she finds that the conditions set forth in paragraph (a) of this section no longer apply. Notice of such reinstatement and the effective date thereof shall be published in the Federal Register.

(c) *Transitional provisions.* In the case of any suspension or reinstatement of the certificate system established by this subpart, the Certifying Authority may prescribe such additional guidelines, instructions, and limitations which shall be applied or implemented by appropriate Customs officials in order to ensure an orderly transition.

Subpart C—Allocations for "Other Specified Countries and Areas"

§ 2011.301 General Statement.

This subpart sets forth the manner in which individual allocations of the tariff-rate quota will be calculated for those countries listed as "Other specified countries and areas" in paragraph (b)(i) of additional U.S. note 3 to chapter 17 of the Harmonized Tariff Schedule of the United States (HTS). It has been determined that the regulations in this subpart are necessary and appropriate to provide reasonable access to the U.S. sugar market to countries listed as "Other specified countries and areas." It has further been determined that these regulations give due consideration to the interests in the U.S. sugar market of domestic producers and materially affected contracting parties to the General Agreement on Tariffs and Trade.

§ 2011.302 Definitions.

Unless the context otherwise requires, for the purpose of this subpart, the following terms shall have the meanings assigned below.

(a) *Individual quota amount* means a specific quantity of sugars, syrups and molasses described in subheadings 1701.11.01, 1701.12.01, 1701.91.21, 1701.99.01, 1702.90.31, 1806.10.41, or 2106.90.11 of the HTS, that may be imported from each country and area included in the category of "Other specified countries and areas."

(b) *Other specified countries and areas* means the following countries and areas: Congo, Cote d'Ivoire, Gabon, Haiti, Madagascar, Mexico, Papua-New Guinea, Paraguay, Saint Christopher-Nevis, and Uruguay.

(c) *Quota* means any tariff-rate quota on imports of sugars, syrups or molasses described in subheadings 1701.11.01, 1701.12.01, 1701.91.21, 1701.99.01, 1702.90.31, 180.10.41, and 2106.90.11 of the HTS established under the provisions of paragraph (a) of additional U.S note 3 to chapter 17 of the HTS.

(d) *Total quota amount* means the total amount, as established by the Secretary of Agriculture, of sugars, syrups and molasses described in subheadings 1701.11.01, 1701.12.01, 1701.91.21, 1701.99.01, 1702.90.31, 1806.10.41, and 2106.90.11 of the HTS, that may be entered or withdrawn from warehouse for consumption, during such period as shall be established by the Secretary of Agriculture.

§ 2011.303 Allocation of individual import quota

(a) Each foreign country and area in the category of "Other specified countries and areas" shall be allocated an individual quota amount for each quota period.

(b) The individual quota amount for each country and area in the category of "Other specified countries and areas" shall be the greater of:

(1) The pro rata share of the total quota amount allocated to the category "Other specified countries and areas" for each quota period in question;

(2) 7,258 metric tons, raw value; or

(3) Such other minimum quota amount as shall be determined by the United States Trade Representative to be appropriate to provide reasonable access to the U.S. market for imports from the other specified countries and area.

(c) Notwithstanding paragraph (b) of this section, the United States Trade Representative may provide for the allocation to other specified countries and areas of other individual quota amounts for specific time periods, or other special rules or limitations, in order to ensure an orderly transition in the following circumstances:

(1) The addition or deletion of a country or area to or from the category

"Other specified countries and areas;" or

(2) A change from an annual quota period (October 1–September 30) to another quota period.

Notice of any such quotas, rules, or limitations shall be published in the Federal Register.

§ 2011.304 Applicability.

This subpart shall be applicable to the quota period beginning October 1, 1990, and all subsequent quota periods.

§ 2011.305 Relationship to overall import quota.

The allocation of minimum quota amounts to the "Other specified countries and areas" may result in a quota allocation for such category which is in excess of that category's percentage allocation of quota.

§ 2011.306 Paperwork Reduction Act assigned number.

The Office of Management and Budget (OMB) has approved the information collection requirements contained in the regulations in this subpart in accordance with 44 U.S.C. chapter 25 and OMB control number 0551–0014 has been assigned.

PART 2013—[REMOVED]

2. Part 2013 is removed.

Signed at Washington, DC, on October 1, 1990.

Carla A. Hills,

United States Trade Representative.

[FR Doc. 90–23603 Filed 10–2–90; 11:28 am]

BILLING CODE 3190–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs Not Subject to Certification; Ketoprofen Solution

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Fort Dodge Laboratories, Inc. The NADA provides for intravenous use of a ketoprofen sterile solution for alleviation of inflammation and pain associated with musculoskeletal disorders in horses.

EFFECTIVE DATE: October 4, 1990.

FOR FURTHER INFORMATION CONTACT: Sandra K. Woods, Center for Veterinary Medicine (HFV–114), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3420.

SUPPLEMENTARY INFORMATION: Fort Dodge Laboratories, Inc., P.O. Box 518, 800 5th St. NW., Fort Dodge, IA 50501–0518, filed NADA 140–269 which provides for veterinary prescription use of ketoprofen (Ketofen™) sterile aqueous solution to treat inflammation and pain associated with musculoskeletal disorders in horses. The NADA is approved as of September 26, 1990, and the regulations are amended by adding new 21 CFR 522.1225 to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

As provided under section 512(c)(2)(F)(i) of the Generic Animal Drug and Patent Term Restoration Act of 1988 (21 U.S.C. 360b(c)(2)(F)(i)), this approval qualifies for 5 years of marketing exclusivity beginning September 26, 1990, because ketoprofen is a new chemical entity; i.e., it has not previously been approved under section 512(c)(1).

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: Section 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

2. New § 522.1225 is added to read as follows:

§ 522.1225 Ketoprofen solution.

(a) *Specifications.* Each milliliter of sterile aqueous solution contains 100 milligrams of ketoprofen.

(b) *Sponsor.* See 000856 in 21 CFR 510.600(c) of this chapter.

(c) *Conditions of use in horses.*—(1) *Amount.* 1.0 milligram per pound of body weight once daily for up to 5 days.

(2) *Indications for use.* For alleviation of inflammation and pain associated with musculoskeletal disorders in horses.

(3) *Limitations.* For intravenous use only. Do not use in breeding animals. Effects on fertility, pregnancy, or fetal health have not been determined. Not for use in horses intended for food. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: September 26, 1990.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 90–23468 Filed 10–3–90; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 0

[Order No. 1446–90]

Delegation of Authority

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This order will amend part 0 of title 28 of the Code of Federal Regulations to delegate to the Assistant Attorney General in charge of the Civil Rights Division the authority assigned to the Attorney General by the Americans with Disabilities Act of 1990, Public Law 101–336.

EFFECTIVE DATE: September 24, 1990.

FOR FURTHER INFORMATION CONTACT: Stewart B. Oneglia, Chief, Coordination & Review Section, U.S. Department of Justice, P.O. Box 66118, Washington, DC 20035–6118, (202) 307–2222 (Voice), (202) 307–2678 (TDD).

SUPPLEMENTARY INFORMATION: This order is a matter of internal Department management. It does not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). It is not a major rule within the meaning of or subject to Executive Order No. 12291.

List of Subjects in 28 CFR Part 0

Authority delegations (Government agencies), Government employees, Organization and functions (Government agencies), Whistleblowing.

Accordingly, by virtue of the authority vested in me as Attorney General by 5 U.S.C. 301 and 28 U.S.C. 509, 510, subpart J of part 0 of title 28 of the Code of Federal Regulations is amended as follows:

1. The authority citation for part 0 is revised to read as follows:

Authority: 5 U.S.C. 301, 2303, 3103; 8 U.S.C. 1103, 1324A, 1427(g); 15 U.S.C. 644(k); 18 U.S.C. 2254, 3621, 3622, 4001, 4041, 4042, 4044, 4082, 4201 *et seq.*, 6003(b); 21 U.S.C. 871, 873(a), 881(d), 904; 22 U.S.C. 263a, 1621–1645o, 1622 note; 28 U.S.C. 509, 510, 515, 516, 519, 524, 543, 552, 552a, 569; 31 U.S.C. 1108, 3801 *et seq.*; 50 U.S.C. App. 1989b, 2001–2017p; Pub. L. 91–513, sec. 501; EO 11919; EO 11267; EO 11300; Pub. L. 101–203.

2. Section 0.50 is amended by adding paragraph (l) to read as follows:

§ 0.50 General functions.

* * * * *

(l) Enforcement and administration of the Americans with Disabilities Act of 1990, Public Law 101–336.

Dated: September 24, 1990.

Dick Thornburgh,

Attorney General.

[FR Doc. 90–23498 Filed 10–3–90; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 36

RIN 2900–AD91

Loan Guaranty: Implementation of Public Law 100–198

AGENCY: Department of Veterans Affairs.

ACTION: Final regulatory amendments.

SUMMARY: The Department of Veterans Affairs (VA) is amending its loan guaranty regulations (38 CFR part 36) to comply with certain provisions of Public Law 100–198, the Veterans' Home Loan Program Improvements and Property Rehabilitation Act of 1987, as amended by Public Law 100–253, the Veterans' Home Loan Program Emergency Amendments of 1988 and with certain provisions of Public Law 101–237, the Veterans Home Loan Indemnity and Restructuring Act of 1989. Changes made by these laws which VA will incorporate into the regulations by these amendments are: (1) An increase in the maximum amount of entitlement from $27,500 to $36,000, except that if the loan amount exceeds $144,000 the maximum amount of entitlement is increased to $46,000, (2) a revision of the method for calculating the guaranty amount, (3) a revision of the occupancy requirements, (4) a revision of the requirements for refinancing loans, and (5) a revision in the amount of the funding fee.

EFFECTIVE DATE: November 5, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Alan Schneider Assistant Director for Loan Policy (264), Loan Guaranty Service, Veterans Benefits Administration, (202) 233–3042.

SUPPLEMENTARY INFORMATION: On November 13, 1989, VA published in the **Federal Register** at pages 47220–47223 proposed regulatory amendments to change: (1) 38 CFR 36.4302, to increase the maximum amount of entitlement and to revise the method for calculating the guaranty amount; (2) §§ 36.4303, 36.4306, and 36.4306a, to revise occupancy requirements; (3) § 36.4306, to limit the amount of refinancing loans to not more than 90 percent of the appraised value of the property; and (4) § 36.4306a, to extend the term of interest rate reduction refinancing loan. Public comments were requested on the proposed amendments, and comments supporting all the changes were received from the vice president of one association.

On December 18, 1989, Public Law 101–237 was enacted. Certain changes made by this law are also being incorporated into the regulations by these amendments.

To comply with provisions of Public Law 101–237, 38 CFR 36.4312(e) is being amended to provide as follows: (1) For all refinancing loans and all loans where the veteran makes no down payment the funding fee shall be 1.25 percent of the loan amount; (2) For loans where the veteran makes a downpayment of 5 percent or more, but less than 10 percent, the funding fee shall be 0.75 percent of the loan amount; and (3) For loans where the veteran makes a downpayment of 10 percent or more, the funding fee shall be 0.50 percent of the loan amount.

Also, to comply with provisions of Public Law 101–237, 38 CFR 36.4302 is being further amended to provide as follows: (1) For loans of $45,000 or less, the maximum guaranty amount shall be 50 percent of the loan amount; (2) For loans of more than $45,000, but no more than $56,250, the maximum guaranty amount shall be $22,500; (3) For loans of more than $56,250, but not more than $144,000, the guaranty amount shall be the lesser of $36,000 or 40 percent of the loan amount; and (4) For loans of more than $144,000, made for the purchase or construction of a home or farm residence or to purchase a residential unit in a condominium, the guaranty amount shall be the lesser of $46,000 or 25% of the loan amount. These amounts are all subject to reduction if the veteran previously used VA loan entitlement.

In addition, § 36.4306 is being further amended to provide three instances in which a refinancing loan that is not an interest rate reduction refinancing loan may be for an amount in excess of 90 percent of the reasonable value. The instances are: (1) To refinance a construction loan; (2) to refinance an installment land sale contract; and (3) to refinance an existing loan assumed by the veteran, provided the new VA loan is at an interest rate lower than that of the loan being refinanced.

In the instances referred to in the preceding paragraph the refinancing loan amount may not exceed the lesser of the reasonable value established by VA or the sum of the outstanding balance on the loan to be refinanced and the closing costs (including discounts) actually paid by the veteran as specified in VA regulations.

VA finds, for good cause, advance publication for notice and public comment is not required on the amendments to 38 CFR 36.4302, 36.4306, and 36.4312(e) required by Public Law 101–237. The regulatory amendments merely update VA regulations consistent with the recent changes in law and do not involve any substantive changes in VA policy or regulations other than those required by the law. Thus, in accordance with the provisions of 38 CFR 1.12, advance publication in the **Federal Register** of these changes is unnecessary. Accordingly, the changes in the regulations are now published as final.

The Secretary hereby certifies that these regulatory amendments will not, if promulgated, have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The proposed amendments simply update VA regulations to incorporate the changes which have already been made by Pubic Law 100–198 as amended by Public Law 100–253.

The Secretary has also determined that the regulatory amendments are not a major rule within the meaning of Executive Order 12291, Federal Regulation. They will not have an annual effect on the economy of $100 million or more, and will not cause a major increase in costs or prices for consumers or individual industries, nor will they have other significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

(The Catalog of Federal Domestic Assistance Program numbers are 64.114 and 64.118)

These amendments are issued under Public Law 100-198 as amended by Public Law 100-253 and the authority granted the Secretary by section 210(c) of title 38, United States Code.

List of Subjects in 38 CFR Part 36

Condominiums, Handicapped, Housing loan program—housing and community development, Manufactured homes, Veterans.

Approved: September 6, 1990.

Edward J. Derwinski,

Secretary of Veterans Affairs.

38 CFR part 36, Loan Guaranty, is proposed to be amended as follows:

§ 36.4302 [Amended]

1a. In § 36.4302 redesignate paragraphs (b) through (i) as paragraphs (c) through (j) respectively.

b. In § 36.4302 paragraph (a) and newly designated paragraphs (d)(1) through (3) are revised and paragraph (b) and newly designated paragraph (i)(4) are added to read as follows:

§ 36.4302 Computation of guaranties or insurance credits.

(a) With respect to a loan to a veteran guaranteed under 38 U.S.C. 1810 the guaranty shall not exceed the lesser of the dollar amount of entitlement available to the veteran or

(1) 50 percent of the original principal loan amount where the loan amount is not more than $45,000; or

(2) $22,500 where the original principal loan exceeds $45,000, but is not more than $56,250; or

(3) Except as provided in subparagraph (4), the lesser of $36,000 or 40 percent of the original principal loan amount where the loan amount exceeds $56,250; or

(4) The lesser of $46,000 or 25 percent of the original principal loan amount where the loan amount exceeds $144,000 and the loan is for the purchase or construction of a home or the purchase of a condominium unit.

(Authority: 38 U.S.C. 1803(a))

(b) With respect to a loan guaranteed under 38 U.S.C. 1810(a)(8) or (9)(B)(i) the dollar amount of guaranty may not exceed the original dollar amount of guaranty on the loan being refinanced.

(Authority: 38 U.S.C. 1803(a))

* * * * *

(d) * * *

(1) If a veteran previously secured a nonrealty (business) loan, the amount of nonrealty entitlement used is doubled and subtracted from $36,000. The sum remaining is the amount of available entitlement for use except that (i) entitlement may be increased by up to $10,000 if the loan amount exceeds $144,000 and the loan is for purchase or construction of a home or purchase of a condominium, and (ii) entitlement for manufactured home loans that are to be guaranteed under 38 U.S.C. 1812 may not exceed $20,000.

(2) If a veteran previously secured a realty (home) loan, the amount of realty (home) loan entitlement used is subtracted from $36,000. The sum remaining is the amount of available entitlement for use except that (i) entitlement may be increased by up to $10,000 if the loan amount exceeds $144,000 and the loan is for purchase or construction of a home or purchase of a condominium, and (ii) entitlement for manufactured home loans that are to be guaranteed under 38 U.S.C. 1812 may not exceed $20,000.

(3) If a veteran previously secured a manufactured home loan under 38 U.S.C. 1812, the amount of entitlement used for that loan is subtracted from $36,000. The sum remaining is the amount of available entitlement for home loans or manufactured home/lot loans guaranteed under 38 U.S.C. 1810, except that entitlement may be increased by up to $10,000 if the loan amount exceeds $144,000 and the loan is for purchase or construction of a home or purchase of a condominium. To determine the amount of entitlement available for manufactured home loans, processed under 38 U.S.C. 1812, the amount of entitlement previously used for that purpose is subtracted from $20,000. The sum remaining is the amount of available entitlement for use for manufactured home loan purposes under 38 U.S.C 1812.

(Authority: 38 U.S.C. 1803(a), 1812(c)(4))

* * * * *

(i) * * *

(4) The loan has been repaid in full, and the loan for which the veteran seeks to use entitlement is secured by the same property which secured the fully repaid loan.

* * * * *

2. In § 36.4303 paragraph (f) is revised to read as follows:

§ 36.4303 Reporting requirements.

* * * * *

(f) Evidence of a guaranty will be issued by the Secretary by appropriate endorsement on the note or other instrument evidencing the obligation, or by a separate certificate at the option of the lender. Notice of credit to an insurance account will be given to the lender. Unused certificates of eligibility issued prior to March 1, 1946, are void. No certificate of commitment shall be issued and no loan shall be guaranteed or insured unless the lender, the veteran, and the loan are shown to be eligible. Evidence of guaranty or insurance will not be issued on any loan for the purchase or construction of residential property unless the veteran, or the veteran's spouse in the case of a veteran who cannot occupy the property because of active duty status with the Armed Forces, certifies in such form as the Secretary shall prescribe, that the veteran, or spouse of the active duty veteran, intends to occupy the property as his or her home. Guaranty or insurance evidence will not be issued on any loan for the alteration, improvement, or repair of any residential property or on a refinancing loan unless the veteran, or spouse of an active duty service member, certifies that he or she presently occupies the property as his or her home. An exception to this is if the home improvement or refinancing loan is for extensive changes to the property which will prevent the veteran or the spouse of the active duty veteran from occupying the property while the work is being completed. In such a case the veteran or spouse of the active duty veteran must certify that he or she intends to occupy or reoccupy the property as his or her home upon completion of the substantial improvements or repairs. All of the mentioned certifications must take place at the time of loan application and closing except in the case of loans automatically guaranteed, in which case veterans or in the case of an active duty veteran, the veteran's spouse shall make the required certifications only at the time the loan is closed.

(Authority: 38 U.S.C. 1804(c))

* * * * *

3. In § 36.4306, paragraphs (a)(1) and (a)(2) are redesignated as paragraphs (a)(2) and (a)(3) respectively, the introductory text of paragraph (a) is

revised, paragraph (a)(1) is added, and, paragraph (c), the last sentence of paragraph (g)(5) and the authority citation to paragraph (g) are revised to read as follows:

§ 36.4306 Refinancing of mortgage or other lien indebtedness.

(a) Any loan for the purpose of refinancing (38 U.S.C. 1810(a)(5)) an existing mortgage loan or other indebtedness secured by a lien of record on a dwelling or farm residence owned and occupied or to be reoccupied if the refinancing loan is for the completion of major alterations, repairs or improvements to the property, by an eligible veteran as the veteran's home, or in the case of an eligible veteran unable to occupy the property because of active duty status in the Armed Forces, occupied or to be reoccupied by the veteran's spouse as the spouse's home, shall be eligible for guaranty in an amount as computed under § 36.4302(a) provided that —

(1) The amount of the loan may not exceed an amount equal to 90 percent of the reasonable value of the dwelling or farm residence which will secure the loan, as determined by the Secretary.

(Authority: 38 U.S.C. 1810(e)(1) and 1810(h);)

* * * * *

(c) Nothing shall preclude guaranty of a loan to an eligible veteran having home loan guaranty entitlement to refinance under the provisions of 38 U.S.C. 1810(a)(5) a VA guaranteed or insured (or direct) mortgage loan made to him or her which is outstanding on the dwelling or farm residence owned and occupied or to be reoccupied after the completion of major alterations, repairs, or improvements to the property, by the veteran as a home, or in the case of an eligible veteran unable to occupy the property because of active duty status in the Armed Forces, occupied or to be reoccupied by the veteran's spouse as the spouse's home.

(Authority: 38 U.S.C. 1810(e)(1))

* * * * *

(g) * * *

(5) * * * However, the total guaranty may not exceed the guaranty amount as calculated under § 36.4302(a) of this part.

(Authority: 38 U.S.C. 1803(a))

4. In § 36.4306a paragraphs (a) and (b) are revised to read as follows:

§ 36.4306a Interest rate reduction refinancing loan.

(a) Pursuant to 38 U.S.C. 1810(a)(8) and (9)(B)(i), a veteran may refinance an existing VA guaranteed, insured or direct loan to reduce the interest rate payable on the existing loan provided the following requirements are met:

(1) The loan must be secured by the same dwelling or farm residence as the loan being refinanced; and

(2) The veteran must own the dwelling or farm residence securing the loan and

(i) Must occupy the dwelling or residence as his or her home; or

(ii) Must have previously occupied the dwelling or residence as his or her home and must certify, in such form as the Secretary shall require, that he or she has previously occupied the dwelling or residence; or

(iii) In any case in which the veteran is on, or was on, active duty status as a member of the Armed Forces and is unable, or was unable, to occupy the residence or dwelling as a home because of such active duty status, the spouse of the veteran must occupy, or must have previously occupied, such dwelling or residence as the spouse's home and must certify to that occupancy in such form as the Secretary shall require.

(Authority: 38 U S.C. 1810(e)(1))

(3) The amount of the refinancing loan may not exceed an amount equal to the sum of the balance of the loan being refinanced and such closing costs as authorized by § 36.4312(d) and a discount not to exceed a dollar amount determined in accordance with § 36.4312(d) (7)(i);

(4) The dollar amount of the guaranty of the 38 U.S.C. 1810(a) (8) or (9)(B)(i) loan may not exceed the original dollar amount of guaranty applicable to the loan being refinanced, less any dollar amount of guaranty previously paid as a claim on the loan being refinanced; and

(5) The term of the refinancing loan (38 U.S.C. 1810(a)(8)) may not exceed the original term of the loan being financed plus ten years or the maximum loan term allowed under 38 U.S.C. 1803(d)(1), whichever is less. For manufactured home loans that were previously guaranteed under 38 U.S.C. 1812 the loan term, if being refinanced under 38 U.S C. 1810(a)(9)(B)(i), may exceed the original term of the loan but may not exceed the maximum loan term allowed under 38 U.S.C. 1803(d)(1).

(Authority: 38 U.S.C. 1810(e)(1))

(b) Notwithstanding any other regulatory provision, the interest rate reduction refinancing loan may be guaranteed without regard to the amount of guaranty entitlement available for use by the veteran, and the amount of the veteran's remaining guaranty entitlement, if any, shall not be charged for an interest rate reduction refinancing loan. The interest rate reduction refinancing loan will be guaranteed with the lesser of the entitlement used by the veteran to obtain the loan being refinanced or the amount of the guaranty as calculated under § 36.4302(a) of this part. The veteran's loan guaranty entitlement originally used for a purpose as enumerated in 38 U.S.C. 1810(a) (1) through (7) and (9)(A) (i) and (ii) and subsequently transferred to an interest rate reduction refinancing loan (38 U.S.C. 1810(a) (8) or (9)(B)(i)) shall be eligible for restoration when the interest rate reduction refinancing loan or subsequent interest rate reduction refinancing loans on the same property meets the requirements of § 36.4302(h).

(Authority: 38 U.S.C. 1803(a))

* * * * *

(5) In § 36.4312 paragraph (e)(4) is redesignated (e)(5), paragraphs (e)(1) through (3) are revised and a new paragraph (e)(4) is added to read as follows:

§ 36.4312 Charges and fees.

* * * * *

(e)(1) Subject to the limitations set out in paragraphs (e)(4) and (e)(5) of this section, a fee must be paid to the Secretary. The fee shall be 1.25 percent of the total loan amount on all refinancing loans and for all loans for the purchase or construction of a home on which the veteran does not make a downpayment. On purchase or construction loans on which the veteran makes a downpayment of 5 percent or more, but less than 10 percent, the amount of the funding fee shall be 0.75 percent of the total loan amount. On purchase or construction loans on which the veteran makes a downpayment of 10 percent or more, the amount of the funding fee shall be 0.5 percent of the total loan amount. All or part of such fee may be paid in cash at loan closing or all or part of the fee may be included in the loan without regard to the reasonable value of the property or the computed maximum loan amount, as appropriate. In computing the fee, the lender will disregard any amount included in the loan to enable the borrower to pay such fee.

(Authority: 38 U.S C. 1829(a))

(2) Subject to the limitations set out in this section, a fee of one-half of one percent of the loan balance must be paid to the Secretary in a manner prescribed by the Secretary by a person assuming a loan to which section 1814 of title 38 U.S. Code applies. The instrument securing such a loan shall contain a provision describing the right of the holder to collect this fee as trustee for

the Department of Veterans Affairs. The loan holder shall list the amount of this fee in every assumption statement provided and include a notice that the fee must be paid to the holder immediately following loan settlement. The fee must be transmitted to the Secretary within 15 days of the receipt by the holder of the notice of transfer.

(Authority: 38 U.S.C. 1814, 1829(d))

(3) The lender is required to pay to the Secretary the fee described in paragraph (e)(1) of this section within 15 days after loan closing. Any lender closing a loan, subject to the limitations set out in paragraphs (e)(4) and (e)(5) of this section who fails to submit timely payment of this fee will be subject to a late charge equal to 4 percent of the total fee due. If payment of the fee described in paragraph (e)(1) of this section is made more than 30 days after loan closing, interest will be assessed at a rate set in conformity with the Department of Treasury's Fiscal Requirements Manual. This interest charge is in addition to the 4 percent late charge, but the late charge is not included in the amount on which interest is computed. This interest charge is to be calculated on a daily basis beginning on the date of closing, although the interest will be assessed only on funding fee payments received more than 30 days after closing.

(4) The fees described in paragraph (e)(1) and (e)(2) of this section shall not be collected from a veteran who is receiving compensation (or who but for the receipt of retirement pay would be entitled to receive compensation) or from a surviving spouse described in section 1801(b) of title 38, United States Code.

(Authority: 38 U.S.C. 1829(b))

6. Section 36.4502 is revised to read as follows:

§ 36.4502 Use of guaranty entitlement.

The guaranty entitlement of the veteran obtaining a direct loan which is closed on or after February 1, 1988, shall be charged with the lessor of the loan amount or an amount which bears the same ratio to $36,000 as the amount of the loan bears to $33,000. The charge against entitlement of a veteran who obtained a direct loan which was closed prior to the aforesaid date, shall be the amount which would have been charged had the loan been closed subsequent to such date.

(Authority: 38 U.S.C. 1811(d)(2)(A))

§ 36.4503 [Amended]

6. a. In § 36.4503 paragraph (a) remove the words "October 1, 1980" where they appear and add, in their place, the words "February 1, 1988".

b. In § 36.4503 paragraph (a) remove the words "$27,500" and add, in their place, the words "$36,000".

c. In § 36.4503 in the authority citation remove the words "(1) and" so the authority citation correctly reads "38 U.S.C. 1811(d)(2)(A)".

[FR Doc. 90-23295 Filed 10-03-90; 8:45 am]
BILLING CODE 8320-01-M

POSTAL SERVICE

39 CFR Part 111

Domestic Mail Manual; Miscellaneous Amendments

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Postal Service hereby describes the numerous miscellaneous revisions consolidated in the Transmittal Letter for issue 35 of the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations, see 39 CFR 111.1. These revisions are minor, editorial, or clarifying.

EFFECTIVE DATE: September 16, 1990.

FOR FURTHER INFORMATION CONTACT: Catherine V. Pagano, (202) 268-2969.

SUPPLEMENTARY INFORMATION: The Domestic Mail Manual has been amended by the publication of a transmittal letter for issue 35, dated September 16, 1990. The text of all published changes is filed with the Director of the Federal Register. Subscribers to the Domestic Mail Manual receive these amendments automatically from the Government Printing Office. The following Summary of Changes section of the transmittal for issue 35 covers the minor changes not previously described in interim or final rules published in the Federal Register.

Summary of Changes

CHAPTER 1

Section 121.22 is revised to recommend that potentially injurious products be enclosed in containers that are difficult for small children to open. (PB 21768, 7-26-90)

Exhibits 122.33, 137.276g(3)(d), and 917.52c are revised to show the attention line as the top line of an address (with or without the word "attention") to comply with automation guidelines.

Exhibits 122.63c-l and p-r are revised to reflect mail processing changes and to remove all unassigned ZIP Codes. Changes are indicated by bold type.

Exhibits 122.63 m, n, o are revised to include additional automated facilities and provide a text reference in the explanation of the lists. The format of **Exhibit 122.63m** is changed to list each 3-digit label individually. **Exhibit 122.63o** is changed to incorporate the current automated area distribution centers. Changes are indicated by bold type (PB 21766, 6-28-90)

Sections 136.2, 136.3, 145.6, 429.18, and 429.62 are amended to provide publishers with a new option for the payment of postage for First- and third-class enclosures in second-class publications. (PB 21768, 7-26-90)

Section 144, *Postage Meters and Meter Stamps,* is amended to provide for metered reply postage for Priority Mail when the rate, determined by the weight of the parcel, is the same for all zones, and to clarify the use of meter-stamped address labels. (PB 21766, 6-28-90)

Section 147, *Exchanges and Refunds,* is amended to set forth in a revised **147.2** the general provisions relating to all refund requests, to reorganize the procedures (currently **147.25** through **147.29**) for refund requests not made at the time of mailing in a new **147.3**, and to adopt new procedures for refund requests made at the time of mailing in a new **147.4**. (PB 21768, 7-26-90)

Section 153.21, *Delivery to Addressee's Agent,* subsection **153.211**, is revised to comply with **911.41**. In **Section 911.41**, the word "him" is replaced by "the addressee." (PB 21766, 6-28-90)

Exhibit 159.151d is revised to clarify any misunderstanding about how to handle third-class mail weighing over 1 ounce. (PB 21764, 5-31-90)

Section 163.533b, *Coiled Stamps,* is amended to reflect the change in the minimum purchase required to receive a plate number. (PB 21764, 5-31-90)

CHAPTER 3

Section 354, *Reusable Mailpieces,* is added to describe the requirements for reusable mailpieces. Reusable mailpieces that are not constructed to meet the applicable requirements must not be accepted into the mail. (PB 21766, 6-28-90)

Section 366, *Preparation Requirements for Optional Combined ZIP + 4 Presort and Presorted First-Class Mailings (Destinating at Automated Sites),* is revised to require that optional 3-digit mail be sorted by automated area distribution centers (AADCs) instead of area distribution centers (ADCs). (PB 21766, 6-28-90)

CHAPTER 4

Sections 423, *Requirements for Specific Categories,* and **424,** *Special Second-Class Privileges,* have several changes to clarify the conditions governing postage refunds when publications are authorized to be mailed at second-class or special second-class rates. These changes do not alter current policies. (PB 21766, 6-28-90)

Sections 445, 644, and 767 are revised to reflect new procedures for obtaining and routing Form 3856, *Application for Authorization to Palletize.* (PB 21769, 8-9-90)

Sections 446, 646, and 769, *Optional Use of Barcoded Sack Labels,* have been added to include the optional use of barcoded sack labels for second-, third-, and fourth-class mail. **Sections 441.321, 445.432, 641.133, 641.224, 641.323, 641.423, 644.332, 764.21, 767.23, 767.33, and 767.823** are also revised to

include consistent language and correct references to the sections affected by these changes. (PB 21769, 8-9-90)

CHAPTER 6

Sections 623 and 644, have new subsections added to allow mailers to combine, on the same pallet, packages from two or more bulk third-class flat-size mailings. This revision is designed to encourage preparation of pallets to the finest level of sortation possible. (PB 21768, 7-26-90)

Section 629.24, *Reusable Mailpieces*, is added to describe the requirements for reusable mailpieces. Reusable mailpieces that are not constructed to meet the applicable requirements must not be accepted into the mail. (PB 21766, 6-28-90)

CHAPTER 9

Section 914.22, *Payment of Fees and Postage*, is revised to clarify the calculation of COD fees and to emphasize that the return address appearing on the COD article must be identical to the return address printed on the COD tag. **Section 914.415** is amended to show that the return address on a COD article must be a domestic address. (PB 21766, 6-28-90)

Section 914.52a(3), is amended to reflect the change in policy for accepting personal checks in payment for COD articles. (PB 21764, 5-31-90)

Section 933.41e, is amended to delete the words "if the parent or guardian so requests in writing," in order to agree with **153.22**.

Section 941.123 adds requirements for money order purchases in amounts between $3,000 and $10,000. The following sections are renumbered. (PB 21769, 8-9-90)

Appendix

Appendix, *List of Addresses*, has been added at page 675 showing the complete mailing addresses of individuals and organizations referred to throughout the DMM.

List of Subjects in 39 CFR Part 111

Postal service.

PART 111—GENERAL INFORMATION ON POSTAL SERVICE

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001-3011, 3201-3219, 3403-3406, 3621, 5001.

2. In consideration of the foregoing, the table at the end of § 111.3(e) is amended by adding at the end thereof the following:

§ 111.3 Amendments to the Domestic Mail Manual.

* * * * *

Transmittal letter: Dated: _____ Federal Register publication for issue September 16, 1990, 55 FR [insert FR page number]

Stanley F. Mires,

Assistant General Counsel, Legislative Division.

[FR Doc. 90-23469 Filed 10-3-90; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3849-2]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Notice of final rulemaking.

SUMMARY: USEPA is approving revisions to the Illinois State Implementation Plan (SIP) for ozone and carbon monoxide (CO). The revisions pertain to the approval of (1) the State's 1982 CO plan and attainment demonstration, (2) its vehicle inspection and maintenance (I/M) program and (3) its transportation control measures. The I/M program and the transportation control measures are required parts of both Illinois' 1982 ozone plan and its 1982 CO plan. USEPA's action is based upon revision requests which were submitted by the State in response to the requirements of part D of the Clean Air Act (Act).

This approval of the I/M program eliminates the basis for USEPA's August 3, 1983 (48 FR 35315) and May 4, 1984 (49 FR 19039) proposed Federal assistance limitations and the August 3, 1983, proposed construction moratorium. Therefore, elsewhere in today's **Federal Register**, USEPA is withdrawing these two notices. However, on November 2, 1989 (54 FR 46271), USEPA proposed to limit certain Federal highway funding assistance for Cook, Lake, Kane, and DuPage Counties, because the State of Illinois had failed to adopt and to submit to USEPA an I/M program commensurate with the severity of the ozone problem in the Chicago area. Even though USEPA is approving the I/M portion of the State's 1982 ozone and CO SIPs today, USEPA believes that the Federal funding restrictions proposed in the November 2, 1989, **Federal Register**, should remain outstanding at this time because the State has not made reasonable efforts to submit all measures necessary to bring the Chicago area into attainment of the ozone National Ambient Air Quality Standard (NAAQS). One measure is enhancement of the existing I/M program.

EFFECTIVE DATE: This final rulemaking becomes effective on November 5, 1990.

ADDRESSES: Copies of the SIP revisions are available at the following addresses for review: (It is recommended that you telephone Randolph O. Cano, at (312) 886-6036, before visiting the Region V office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604

Illinois Environmental Protection Agency, Division of Air Pollution Control, 2200 Churchill Road, Springfield, Illinois 62706

U.S. Environmental Protection Agency, Public Information Reference Unit, 401 M Street SW., Washington, DC 20460

FOR FURTHER INFORMATION CONTACT: Cheryl Newton (312) 886-6081.

SUPPLEMENTARY INFORMATION: The Clean Air Act Amendments of 1977 added a new part D to title I of the Act. Under part D, the States had to revise their SIPs for all nonattainment areas and submit revisions (1979 plan) to USEPA by January 1, 1979 (secs. 171-178 of the Act; sec. 129(c) (uncodified) of Pub. L. 95-95). The revised plan had to provide for attainment in nonattainment areas by December 31, 1982, unless the State demonstrated that it could not attain either the ozone or CO NAAQS by that date, despite the implementation of all reasonably available control technology (RACT—sec. 172(a) of the Act).

If USEPA approved this demonstration, the attainment date for ozone or CO could be extended up to December 31, 1987, and the State could defer certain requirements but would have to meet additional, more stringent planning requirements at a later date. States receiving such extensions were to submit a second SIP revision (1982 plan) that provided for attainment by December 31, 1987, which complied with all of the part D requirements (sec. 172(c)).

These second SIP revisions had to be submitted by July 1, 1982 (sec. 129(c) (uncodified), Pub. L. 95-95). On January 22, 1981 (46 FR 7182), USEPA published final criteria for reviewing these revisions. These criteria supplemented the "General Preamble" for SIP revisions for nonattainment areas, which was published on April 4, 1979 (44 FR 20372).[1] Other requirements for plan preparation and USEPA policy guidance were contained in a technical support document (TSD) memorandum dated November 15, 1982. These documents are available for review at the Region V office, listed above.

In April 1979, the State of Illinois submitted its 1979 SIP revisions for ozone and CO in the Illinois portion of the Chicago metropolitan area, and for ozone in the Illinois portion of the St.

[1] USEPA published four additional notices supplementing the general preamble on July 2, 1979 (44 FR 38583); August 28, 1979 (44 FR 50371); September 17, 1979 (44 FR 53761) and November 23, 1979 (44 FR 67185).

Louis metropolitan area. In its submittal, the State requested that USEPA extend the attainment date for meeting the ozone and CO standards in these areas until December 31, 1987. USEPA approved this request and the State's 1979 plans on February 21, 1980 (45 FR 11472).

On February 3, 1983 (48 FR 5110), USEPA proposed disapproval of and solicited comment on the 1982 Illinois SIP revisions for ozone and CO, which had been submitted by the Illinois Environmental Protection Agency (IEPA) in draft form on June 30, 1982. On December 3, 1982, the State submitted responses to comments included in USEPA's November 15, 1982, TSD. On May 4, 1983, November 4, 1983, and January 20, 1984, the State submitted substantial revisions to its draft plans.

On August 15, 1984 (49 FR 32601), USEPA again proposed rulemaking on the Illinois 1982 ozone and CO SIP, taking into account the State's submittals designed to address the deficiencies identified in the February 3, 1983 (46 FR 5110) proposed disapproval. In the August 15, 1984, rulemaking, USEPA proposed to approve the State's ozone and CO plans, except for the I/M program which the State had not implemented as committed to in its 1979 SIP. USEPA also proposed to approve the State's attainment demonstration for CO and the transportation control measures.

On April 24, 1989 (54 FR 16372), USEPA again presented its analysis of the ozone and CO SIP elements and proposed rulemaking on each element. USEPA proposed approval of (1) the State's CO plan, including the attainment demonstration, and (2) the State's I/M program and transportation control measures. A summary of USEPA's previous analysis follows.

Attainment Demonstration for CO in the Chicago Area

The Illinois CO SIP includes separate attainment demonstrations for downtown Chicago and for other nonattainment areas in and near Chicago (i.e., the freeway corridors). Illinois submitted two basic attainment demonstrations for downtown Chicago on June 30, 1982, and May 4, 1983. (Illinois also submitted responses to comments on the first demonstration on December 3, 1982.) In its May 4, 1983, submittal, Illinois stated that the analysis included reflected IEPA's best estimate of the anticipated emission reductions from implementation of the Federal Motor Vehicle Control Program (FMVCP).

The May 4, 1983, analysis for CO in downtown Chicago relied on the rollback model. This analysis assumed that the violations monitored downtown were predominately the result of motor vehicle emissions. Stationary source emissions were considered by means of a 0.2 parts per million (ppm) constant background concentration. The rollback analysis relied on emission factors derived for the MOBILE2.5 emission factor model. Illinois also used 1982 air quality data in its analysis in the belief that the use of these data provide a more stringent test of whether attainment will be achieved by 1987, than do the 1979 to 1981 air quality data.

The rollback approach assumes that the non-background component of an observed concentration will decrease by the same percentage as emissions. Illinois provided rollback calculations based on a variety of vehicle operating conditions that might be applicable in the downtown area, as well as for two different ambient temperatures. In all cases, attainment was shown to occur by the end of 1987. USEPA made additional calculations based on slightly different assumptions of vehicle operating conditions. These calculations support Illinois' conclusion that attainment will be achieved by the end of 1987. Rollback calculations for 1979, 1980, and 1981 support Illinois' statement that 1982 air quality data are the most stringent data.

A final issue concerning the downtown attainment demonstration relates to I/M. Illinois' attainment demonstration for CO in downtown Chicago does not reflect the impact of an I/M program. However, consideration of an I/M program would lead to the projection of an earlier attainment date. Thus, Illinois' attainment demonstration may be considered adequate evidence that the CO standard will be achieved in downtown Chicago by the end of 1987. USEPA, therefore, proposed approval of this portion of the CO SIP revision.

The CO attainment demonstration for the freeway corridors was submitted by Illinois on June 30, 1982. This attainment demonstration was based on hot-spot modeling using the CALINE3 model. On August 23, 1982, USEPA sent comments to Illinois on its June 30, 1982, submittal. Based on USEPA comments, the State submitted a corrected analysis on January 20, 1984. This analysis shows that attainment did not occur by 1982 at a few locations in the freeway corridors in the Chicago area. However, these locations were predicted to have 1982 concentrations only slightly above the standard, and it was predicted that, based on reductions obtained from the FMVCP, attainment would occur well before 1987 at all locations in the Chicago area freeway corridors. USEPA, therefore, proposed to approve this portion of the Illinois SIP.

Transportation Control Measures (TCMs)

TCMs, as outlined in section 108 of the Act, are considered reasonably available control measures under section 172(b)(2). Illinois evaluated TCMs pursuant to section 108 of the Act and committed to adopt certain transportation strategies.

The Transportation Control Plan (TCP) for Northeastern Illinois describes eight TCMs to be implemented to obtain the hydrocarbon (HC) and CO reduction goal. The TCP will implement the following TCMs: Public transportation; ride sharing; traffic flow improvements; bicycle promotion; long-range transit; park and ride lots; alternative work schedules; and exclusive bus/car pool lanes. While the State recognized that these TCMs would result in CO emission reductions, no credit was taken as part of the CO attainment demonstration. The attainment demonstration relied entirely on emission reductions from the FMVCP program.

The TCP for the East St. Louis area describes six TCMs to be implemented to provide the HC emission reduction target. The TCP will implement the following TCM package: traffic flow improvements; electric vehicle use; increase in ride sharing; increase in van pooling; 30 percent increase in transit ridership; and park and ride lots. USEPA found these TCMs adequate and proposed approval of these TCMs.

Vehicle Inspection and Maintenance (I/M)

Pursuant to section 172(a)(2) of the Act, the State of Illinois submitted a Part D SIP which demonstrated that the ozone and CO standards could not be attained by 1982 in the Chicago area and that the ozone standard could not be attained by 1982 in the East St. Louis area. Consequently, Illinois requested an extension of time for attainment of the ozone and CO standards in these nonattainment areas. As required by section 172(b)(11)(B), Illinois also submitted a schedule for implementation of I/M in these areas. On February 21, 1980 (45 FR 11472), USEPA approved Illinois' revised SIP for ozone and CO, including the extension requests and the I/M schedule.

On August 3, 1983, (48 FR 35315), USEPA proposed funding and growth restrictions for the State of Illinois under section 176(b) and 173(4), respectively, of the Act for failure to implement its I/

M program in Cook, Lake, Kane, DuPage, St. Clair, and Madison Counties, as required by its approved 1979 SIP. In addition, on May 4, 1984, (49 FR 19039), USEPA proposed to impose certain restrictions on Federal assistance funds for highway construction and air quality planning grants based on the State's failure to submit rules, regulations, and procedures for an I/M program as part of its 1982 SIP revision. Subsequently, State legislation was signed into law in September of 1984 creating the legal authority and funding mechanism for an I/M program.

The State of Illinois contracted with Systems Control, Inc., to develop and operate a centralized network of testing facilities in Cook County and portions of Lake, DuPage, St. Clair, and Madison Counties. Vehicle testing began on May 1, 1986.

Vehicles are tested for hydrocarbon and CO emissions. A probe is inserted into the vehicle tailpipe and the exhaust is analyzed for emissions. If the vehicle passes the test, an annual sticker is issued that indicates compliance with the law. If the vehicle fails to pass the test, the vehicle owner is required to make necessary repairs and submit the vehicle for a retest. If the vehicle is unable to pass a retest, a 1 year waiver is available under certain conditions.

Enforcement of the program is accomplished through a combination of computer matching and sticker enforcement. The primary enforcement mechanism is the suspension of the drivers license and vehicle registration of all violators. The suspensions are made automatically by a computer system which tracks vehicles required to be tested and actual test data. Motorists are also subject to fines based on operating a vehicle with an expired or missing sticker.

USEPA's detailed evaluation of the State's I/M program is contained in TSDs dated June 6, 1986, February 18, 1987, October 20, 1987, and June 5, 1989. These documents are available at the Region V Office listed above.

In the April 24, 1989, Federal Register (54 FR 16372), USEPA addressed the State's I/M submittal and stated that the program meets USEPA requirements for approval. USEPA, therefore, proposed to approve the State's I/M program as part of its ozone and CO SIPS. However, USEPA noted that, during the first year of the program, (1) not all subject vehicles received a test notification from the State and (2) the 7 month enforcement cycle, as specified by State procedures, was not met.

Since the April 24, 1989, rulemaking notice, the State has made significant improvements in the enforcement program. The enforcement effort is achieving an overall compliance rate of at least 95 percent. Further, since February 1988, enforcement action has been consistently taken within the 7 month cycle committed to in the SIP. Other improvements designed to reduce the number of incorrect notices, warnings, and summonses have also been implemented. USEPA has concluded that the enforcement program adequately meets USEPA requirements for approval.

Funding and New Source Growth Restrictions

USEPA's decision to give final approval to the Illinois I/M program as part of the State's 1982 ozone and CO SIPs eliminates the basis for the August 3, 1983, (48 FR 35315) and May 4, 1984, (49 FR 19039) proposed Federal assistance limitations and the August 3, 1983, proposed construction moratorium for the State's failure to submit and implement an I/M program as part of its 1982 SIP revision. USEPA, therefore, is withdrawing these two notices elsewhere in today's Federal Register.

It should be noted that the August 3, 1983, proposed imposition of a construction moratorium had been preceded by an earlier, more broad moratorium. Section 110(a)(2)(I) growth restrictions have been in effect in all Illinois primary nonattainment areas (as to all pollutants for which those areas are designated primary nonattainment) since May 26, 1981, when the Seventh Circuit Court of Appeals invalidated USEPA's approval of the State's new source review rules on State law procedural grounds. See *CBE* v. *EPA*, 649 F.2d 522 (7th Cir. 1981).

The December 31, 1987, ozone attainment deadline has now passed, and the Chicago and St. Louis areas still have not attained the ozone NAAQS. On May 26, 1988, USEPA notified the State that its ozone SIP was substantially inadequate to attain and maintain the ozone NAAQS. Further, on October 17, 1988, USEPA disapproved the Chicago portion of the Illinois ozone SIP (53 FR 40415). At that time, USEPA retained the growth restrictions as provided for in section 110(a)(2)(I) of the Act on major new stationary sources and major modifications of existing sources of volatile organic compounds in the four counties presently designated nonattainment within the Illinois portion of the Chicago ozone nonattainment area, i.e., Cook, DuPage, Kane, and Lake Counties.

Under the Act, Illinois is under a continuing obligation to create a plan which will attain and maintain the ozone NAAQS. On November 2, 1989, (54 FR 46271), USEPA proposed to limit certain Federal highway funding assistance for Cook, Lake, Kane, and DuPage Counties, because the State of Illinois has failed to adopt and to submit to USEPA an I/M program commensurate with the severity of the ozone problem in the Chicago area. USEPA believes that enhancement of the existing program is necessary to help bring the area into attainment of the ozone NAAQS and that such an I/M program is a critical component of the "reasonable efforts" Illinois must make under section 176(a) of the Act.

Even though USEPA is completing final rulemaking on the I/M portion of the State's 1982 ozone and CO SIPs today, USEPA believes that the Federal funding restrictions proposed in the November 2, 1989, Federal Register are available because the State's ozone SIP was disapproved on October 17, 1988, (53 FR 40415). The State has not made reasonable efforts to submit all measures necessary to bring the Chicago area into attainment of the ozone NAAQS. One measure is enhancements to the existing I/M program.

The State is currently pursuing adoption of an enhanced I/M program. In the interim, however, the current Illinois I/M program satisfies all current policy requirements for the I/M program required under section 172(b)(1)(B), and does contribute to improving air quality in the nonattainment areas. Therefore, although USEPA is completing final rulemaking to approve the I/M portion of the Illinois 1982 ozone/CO SIPs, the November 2, 1989, Federal funding restriction proposal remains outstanding. USEPA will take action on any revisions to the State's I/M program in future notices.

Public Comment Discussion

Public comment was solicited on the proposed SIP revisions and on USEPA's proposed rulemaking action. USEPA received comments from the IEPA and Amoco Oil Company (Amoco). A summary of the comments received and USEPA's response is summarized below.

Comment: The first IEPA comment addresses USEPA reference to the enforcement program as a "vehicle inspection sticker system" in the April 24, 1989, notice. IEPA indicates that the primary enforcement mechanism is the suspension of the drivers license and vehicle registration of all violators. The suspensions are made automatically by a computer system which tracks vehicles required to be tested and actual test data. IEPA notes that this type of system is generally referred to as

computer matching and is used in conjunction with the requirement for the display of stickers by affected vehicles.

USEPA Response: USEPA agrees with this distinction and has incorporated new language describing the enforcement system into this final approval notice.

Comment: The second IEPA comment concerns recent data IEPA submitted which demonstrates that the required level of enforcement has been attained and is being maintained.

USEPA Response: USEPA accepts the State's demonstration and has concluded that the State's enforcement mechanism meets USEPA policy requirements for approval as part of the State's 1982 ozone and CO SIPs.

Comment: Amoco recommends that USEPA disapprove the existing I/M program in Illinois because the Chicago metropolitan area is not in attainment of the ozone NAAQS. Because a major portion of volatile organic compound emissions are attributed to mobile sources, Amoco supports a strengthening of the current program rather than its approval. Amoco suggests that the Chicago I/M program should be expanded to include more of the metropolitan area and that the existing enforcement mechanism be changed to require a passed emission inspection in order to get license plates for the vehicle each year. Another change recommended by Amoco is to refine the waiver provision by adoption of a repair cost ceiling of $200.00 rather than a low emission tuneup requirement.

USEPA Responses: The April 24, 1989, **Federal Register** proposed to approve the Illinois I/M program portion of the State's 1982 ozone and CO SIPs. USEPA policy on 1982 SIP approval is contained in the January 22, 1981, **Federal Register** (46 FR 7182). USEPA has determined that the Illinois I/M program, as designed, meets all Clean Air Act requirements and current policy requirements. While USEPA acknowledges that there are several areas where program improvements could be made and is pursuing such enhancements (see the discussion of the November 2, 1989, **Federal Register** proposal addressed elsewhere in this notice), if the program meets current USEPA policy requirements, then the design of the program is approvable as a component of the 1982 ozone/CO SIP.

Conclusion

Based on USEPA's proposed rulemaking action and in consideration of the public comments received, USEPA is taking the following final rulemaking actions.

1. The State's I/M program and Transportation Control Measures are approved as part of both the Illinois 1982 ozone and CO SIPS.

2. The State's 1982 CO Plan and attainment demonstration are approved.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 3, 1990. This action may not be challenged later in the proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Environmental protection, Hydrocarbons, Intergovernmental cooperation, Ozone.

Note: Incorporation by reference of the State Implementation Plan for the State of Illinois was approved by the Director of the **Federal Register** on July 1, 1982.

Dated: September 25, 1990.

William K. Reilly,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Title 40 of the Code of Federal Regulations, chapter I, part 52, is amended as follows:

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.720 is amended by adding new paragraph (c)(79) to read as follows:

§ 52.720 Identification of plan.

(c) * * *

(79) On March 20, 1986, November 17, 1986, and July 1, 1987, Illinois submitted its vehicle inspection and maintenance plan for the Chicago and East St. Louis areas.

(i) *Incorporation by reference.* (A) Title 35: Environmental Protection, Subtitle B: Air Pollution, Chapter II: Environmental Protection Agency, Part 276, Procedures To Be Followed in the Performance of Annual Inspections of Motor Vehicle Exhaust Emissions, Adopted at 10 Illinois Register 13954, effective August 13, 1986.

(ii) *Additional material.* (A) "Technical Procedures Memorandum—Enforcement" between the Illinois Secretary of State and the Illinois Environmental Protection Agency, as submitted by Michael J. Hayes, Manager, Division of Air Pollution Control on July 1, 1987.

* * * * *

3. Section 52.722 is revised to read as follows:

§ 52.722 Approval status.

(a) With the exceptions set forth in this subpart, the Administrator approved Illinois' plan for the attainment and maintenance of the National Ambient Air Quality Standards under section 110 of the Clean Air Act. Furthermore, the Administrator finds the plan satisfies all requirements of part D, title I of the Clean Air Act as amended in 1977, except as noted below. In addition, continued satisfaction of the requirements of part D for the ozone portion of the SIP depends on the adoption and submittal of RACT requirements by July 1, 1980, for the sources covered by CTGs between January 1978 and January 1979 and adoption and submittal by each subsequent January of additional RACT requirements for sources covered by CTGs issued by the previous January.

(b) The Administrator finds that the transportation control plans for the East St. Louis and Chicago areas submitted on December 3, 1982, satisfy the related requirements of part D, title I of the Clean Air Act, as amended in 1977.

(c) The Administrator finds that the carbon monoxide control strategy submitted on May 4, 1983, satisfies all requirements of part D, title I of the Clean Air Act, as amended in 1977, except for section 172(b)(6).

[FR Doc. 90–23393 Filed 10–3–90; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[OST Docket No. 1; Amdt. 1–234]

Organization and Delegation of Powers and Duties

AGENCY: Office of the Secretary, Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This document (1) delegates authority to the Administrators of the Department of Transportation's Operating Administrations and to the Commandant of the U.S. Coast Guard to carry out provisions of the Federal Technology Transfer Act of 1986; (2) codifies the delegation of authority of the Secretary under Section 7005 of the Consolidated Omnibus Budget

Reconciliation Act of 1985 to the Administrator of the Research and Special Programs Administration (RSPA); (3) makes the necessary adjustments in the delegations to reflect the transfer of functions previously carried out by the former Science and Technology Advisor, and the Office of Technology and Planning Assistance, to the Administrator of RSPA; and (4) delegates certain emergency preparedness functions with respect to civil transportation services to the Administrator of RSPA.

EFFECTIVE DATE: October 4, 1990 for § 1.22; October 4, 1990, for the delegations under the Federal Technology Transfer Act of 1986 (§ 1.45(a)(14)); December 1, 1980, for the delegation of emergency preparedness functions (§ 1.53(e)); April 7, 1986, for the delegation under section 7005 of the Consolidated Omnibus Budget Reconciliation Act of 1985; (§ 1.53(a)(8)); and October 1, 1987, for adjustments in delegations with respect to functions formerly carried out by the Science and Technology Advisor and the Office of Technology and Planned Assistance (§§ 1.23, 1.53(h), 1.64)).

FOR FURTHER INFORMATION CONTACT: Barbara Betsock, Deputy Chief Counsel, Research and Special Programs Administration, DCC–1, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, telephone number (202) 366–4400, or Steven B. Farbman, Office of the Assistant General Counsel for Regulation and Enforcement, C–50, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, telephone number (202) 366–9307.

SUPPLEMENTARY INFORMATION: Section 2 of the Federal Technology Transfer Act of 1986 (Pub. L. No. 99–502; 15 U.S.C. 3710a) authorizes the head of each Federal agency to permit the agency's laboratories to enter into cooperative research and development agreements with other agencies, state and local governments, and the private sector, and to negotiate agreements to license Government-owned inventions. This amendment delegates the authority of the Secretary of Transportation to enter into such agreements to the Administrators of the Department's Operating Administrations and the Commandant of the U.S. Coast Guard.

This amendment also delegates to the Administrator of RSPA the authority to collect pipeline user fees under Section 7005 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. No. 99–272; 49 U.S.C. App 1682a). Section 7005 of that Act mandates the collection of user fees with respect to pipeline facilities regulated for safety by the RSPA.

This amendment also deletes references to the Science and Technology Advisor and the Office of Technology and Planning Assistance, and redelegates the necessary authority to carry out their functions to the Administrator of RSPA. Those functions were transferred to the RSPA Office of Research and Technology in 1987.

Further, this amendment also redelegates authority to the Administrator of RSPA certain emergency preparedness functions that have been delegated to the Secretary. These functions involve exercise of the Secretary's authority with respect to the assignment of priorities and the allocation of civil transportation services in the event of domestic or national security emergencies. The functions have long been carried out by the Director of the Office of Emergency Transportation, within RSPA, through Departmental Order, DOT 1900.7C, Department of Transportation Crisis Action Plan, of December 1, 1980.

In addition, this amendment makes a technical correction by incorporating into the Code of Federal Regulations the delegations with respect to emergency preparedness. These delegations are set forth in Departmental Order, DOT 1900.7C, but had not been included in the Code.

Since these amendments relate to Departmental management, procedures, and practice, notice and public comment are unnecessary. The delegations of authority to the Administrators of the Operating Administrations to carry out the provisions of the Federal Technology Transfer Act of 1986 are effective as of the date of publication of this Final Rule; the delegation to the Administrator of RSPA for certain emergency preparedness functions became effective on December 1, 1980 (effective date of Departmental Order DOT 1900.7C); the delegation of authority of the Secretary under section 7005 of the Consolidated Omnibus Budget Reconciliation Act of 1985 to the RSPA Administrator became effective on April 7, 1986 (date of enactment); the adjustments in delegations with respect to the Science and Technology Advisor and the Office of Technology and Planning Assistance became effective on October 1, 1987 (date functions were transferrred).

List of Subjects in 49 CFR Part 1

Authority delegations (Government agencies), Organization and functions (Government agencies).

In consideration of the foregoing, part 1 of title 49, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 1 continues to read as follows:

Authority: 49 U.S.C. 322.

§ 1.22 [Amended]

2. Section 1.22 is amended by revising paragraph (a) by removing "Science and Technology Advisor," and paragraph (e) by removing the words "and Technology and Planning Assistance," inserting the word "and" before "Intergovernmental," and changing the semicolon after the words "Consumer Affairs" to a period.

§ 1.23 [Amended]

3. Section 1.23 is amended by removing the words "sharing of related technology in developing and promoting DOT programs," and the words "and technical assistance;" in paragraph (e) and by removing and reserving paragraph (i).

4. Section 1.45 is amended by adding a new paragraph (a)(14) to read as follows:

§ 1.45 Delegations to all Administrators.

* * * * *

(a) * * *

(14) Carry out the functions vested in the Secretary by section 2 of the Federal Technology Transfer Act of 1986, (Pub. L. No. 99–502; 15 U.S.C. 3710a), which authorizes agencies to permit their laboratories to enter into cooperative research and development agreements.

5. Section 1.53 is amended by adding new paragraphs (a)(8), (e) and (h) to read as follows:

§ 1.53 Delegations to the Administrator of the research and special programs.

* * * * *

(a) * * *

(8) Section 7005 of the Consolidated Omnibus Budget Reconciliation Act of 1985, as it relates to pipeline safety user fees.

* * * * *

(3) *Emergency preparedness.* Carry out the functions related to emergency preparedness vested in the Secretary by 49 U.S.C. 101 and 301 or delegated to the Secretary by or through the Defense Production Act of 1950, 50 U.S.C. App. 2061 *et seq.;* Executive Order 10480, as amended; Executive Order 12148; Executive Order 12656; Reorganization Plan No. 3 of 1978; and such other statutes, executive orders, and other directives as may pertain to emergency preparedness.

* * * * *

(h) *Science and technology.* (1) With respect to scientific and technological matters, serve as principal advisor to the Secretary and representative of the Department to the academic community, the private sector, professional organizations, and other Government agencies.

(2) Serve as principal liaison official for the Department of Transportation with the Office of Science and Technology Policy in the Executive Order of the President.

(3) Serve as Chairperson of the Department of Transportation's Research and Development Coordinating Council.

(4) Serve as Chairperson of the Department of Transportation Navigation Council.

(5) Serve as primary official responsible for coordination and oversight of the Department's implementation of section 2 of the Federal Technology Transfer Act of 1986, (Pub. L. No. 99–502; 15 U.S.C. 3710a), relating to the transfer of Federal technology to the marketplace.

§ 1.64 [Removed]

6. Section 1.64 is removed and reserved.

Issued on: September 24, 1990.

Samuel K. Skinner,

Secretary of Transportation.

[FR Doc. 90–23435 Filed 10–3–90; 8:45 am]

BILLING CODE 4910–62–M

Federal Highway Administration

49 CFR Part 387

[FHWA Docket No. MC–121]

RIN 2125–AB65

Minimum Levels of Financial Responsibility for Motor Carriers; Self-Insurance

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: This final rule makes permanent an interim rule published in the **Federal Register** on June 18, 1986 at 51 FR 22080. The rule permits certain for-hire motor carriers of property to satisfy the FHWA's financial responsibility requirements by providing evidence that they have received approval from the Interstate Commerce Commission (ICC) to self-insure and have maintained a "satisfactory" safety rating assigned by the FHWA.

EFFECTIVE DATE: This rule is effective November 5, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Neill L. Thomas, Office of Motor Carrier Standards, (202) 366–4049, or Mr. Charles E. Medalen, Office of the Chief Counsel, (202) 366–1354, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except on legal holidays.

SUPPLEMENTARY INFORMATION: The FHWA published an interim-final rule (Docket No. MC–121; Amdt. No. 83–18) in the **Federal Register** on June 18, 1986 (51 FR 22080), permitting certain for-hire motor carriers of property to satisfy their financial responsibility requirements by providing evidence that they have received approval from the ICC to self-insure and have maintained a "satisfactory" safety rating assigned by the FHWA (49 CFR § 387.7(d)(3)). The ICC allows carriers to self-insure for bodily injury and property damage, subject to certain conditions. Those conditions require motor carriers to do the following (see 49 CFR 1043.5):

1. Submit carrier quarterly and annual financial statements to the Commission. The statements must include a certification by an appropriate carrier official verifying the accuracy of the information provided. Disclosure is also required of affiliated companies which provide support services for the operations of the motor carrier;

2. File quarterly claim reports detailing the number, dollar amount, nature of its claims experience, and quarterly reports detailing pending court cases relating to or arising from claims experience;

3. Immediately notify the ICC of any pending or contingent liability claim(s) which individually exceed $50,000 or collectively exceed $250,000;

4. Maintain an irrevocable $1 million line of credit, notify the ICC immediately upon any draw-down of the credit line, have unrestricted access to the entire credit line, and draw-down from the credit line only to satisfy bodily injury and property damage claims;

5. In the event of a draw-down, provide the ICC with a plan detailing the motor carrier's proposed response to future liability claims;

6. Notify the ICC prior to the effective date of any change or cancellation of the credit line, or of renewal of the credit line;

7. Maintain a net worth of at least $2 million, and notify the ICC at any time that its net worth falls below that figure, at which time the motor carrier will have 30 days to correct the situation or face termination of the authority to self-insure; and

8. Acknowledge that the Commission retains the authority to terminate the motor carrier's self-insurance authorization at any time if it appears to the ICC that the motor carrier's financial arrangements fail to provide satisfactory protection for the public.

The ICC made its interim rule (49 CFR 1043.5) final on February 6, 1987 (52 FR 3815).

The ICC has allowed motor carriers subject to its jurisdiction to become self-insurers for the past four years. As of May 1990, the Commission had received 88 applications for self-insurance. Fifty-six applications have been granted; nineteen applications have been denied; five have been dismissed or rejected; seven have been withdrawn by the applicant; and one is being processed. Even though 56 applications have been granted, the ICC's records indicate that only 20 motor carriers are actively using their self-insurance authority.

The FHWA promulgated its self-insurance regulation as an interim final rule without opportunity for prior notice and comment. The agency believed "that the seriousness and extent of the current insurance cost and availability problems facing motor carriers of property is good cause to take immediate action. The difficulties engendered by the current crisis are affecting all motor carriers and require immediate action if the agency is going to provide some measure of relief." (51 FR 22082) However, the rule did request subsequent comments from the public. Only six comments were received. All but one of them supported the FHWA's action. The Department of the Army opposed allowing motor carriers of hazardous substances to be self-insurers. The Army questioned the effectiveness of such a program screening out unqualified carriers. It was concerned that recovery of damages from self-insured motor carriers would be difficult, especially when catastrophic accidents occurred. It also believed there was reason to doubt the government could adequately regulate this complex area.

Although self-insurance has proved to be less important than anticipated in resolving the insurance crisis of the mid-1980's, it has functioned effectively for a small number of ICC-authorized motor carriers. Despite the Army's concern, the ICC has received no complaints alleging that a self-insured motor carrier has failed to pay an adjudicated claim arising from a motor vehicle accident. The FHWA is therefore making the June 18, 1986 interim rule final.

The FHWA has determined that this action does not constitute a major rule

under Executive Order 12291 or a significant regulation under the regulatory policies and procedures of the Department of Transportation.

Since the interim final rule was issued, a minimal number of motor carriers have elected to self-insure. The economic impact of the provisions of the interim final rule have been minimal. Therefore, a full regulatory evaluation has not been prepared. For the foregoing reasons, and under the criteria of the Regulatory Flexibility Act, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this amendment does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

Accordingly, the interim final rule amending 49 CFR 387.7 which was published in the Federal Register at 51 FR 22080 on June 18, 1986, is adopted as a final rule without change.

List of Subjects in 49 CFR Part 387

Highways and roads, Financial responsibility, Insurance, Motor carriers.

(Catalog of Federal Domestic Assistance Program Number 20.217, motor carrier safety)

Authority: 49 U.S.C. 10927 note; 49 CFR 1.48.

Issued on September 27, 1990.

T.D. Larson,

Administrator.

[FR Doc. 90-23433 Filed 10-3-90; 8:45 am]

BILLING CODE 4910-22-M

National Highway Traffic Safety Administration

49 CFR Part 594

RIN 2127-AC98

[Docket No. 89-8; Notice 4]

Schedule of Fees Authorized by the National Traffic and Motor Vehicle Safety Act

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: In September 1989 NHTSA published its first schedule of fees authorized by the Imported Vehicle Safety Compliance Act of 1988, which amended the National Traffic and Motor Vehicle Safety Act of 1966. The 1988 Act provides that the fees shall be reviewed, and, if appropriate, adjusted at least every 2 years. This final rule adopts certain adjustments which will apply as of October 1, 1990, the beginning of fiscal year 1991.

The agency has determined that the fee for the registration will remain unchanged at $255 for applications for registered importer status, and that the annual fee for renewal of such status will also be $255. The fee required to reimburse the U.S. Customs Service for bond processing costs will increase by twenty cents to $4.55 per bond.

Presently, the fee for a determination of vehicle eligibility for importation is payable by the registered importer who petitions the agency, or by the first person importing a vehicle under a determination made by the agency on its own initiative. These fees are $1,560 if the vehicle is substantially similar to a model certified by its original manufacturer as complying, and $2,150 if it is not. Under the new fee structure adopted, fees will be payable in part by any petitioner for a determination, and in part by the importer of each vehicle covered by a determination, with the agency reconciling costs and fees received in establishing appropriate fees for the next fiscal year. If the determination is made on NHTSA's initiative, the fee will be payable by the importer alone. The cost basis for the fees will remain the same but they will, in theory, be payable by all who benefit from such determinations. The agency has adopted a petition fee of $100 for substantially similar determinations, and $500 for others. Each vehicle imported under either determination will be subject to a fee of $83. Each vehicle imported under a determination made by NHTSA on its own initiative will be subject to a fee of $156.

DATES: The effective date of the final rule is September 30, 1990.

FOR FURTHER INFORMATION CONTACT: Taylor Vinson, Office of Chief Counsel, NHTSA, (202-366-5263).

SUPPLEMENTARY INFORMATION:

Introduction

On September 29, 1989, NHTSA adopted 49 CFR part 594, establishing the initial fees authorized by section 108 of the National Traffic and Motor Vehicle Safety Act, as amended by the Imported Vehicle Safety Compliance Act of 1988, Public Law 100-562 (54 FR 40100; see this notice for a full description of the agency's methodology and rationale in its determination of costs). Section 108(c)(3)(B) (15 U.S.C. 108(c)(3)(B) of the act provides that the amount or rate of fees shall be reviewed, and if appropriate, adjusted at least every 2 years. Further, the fees applicable in any fiscal year shall be established before the beginning of such year. The statute authorizes an annual fee to cover the costs of administration of the importer registration program, an annual fee or fees to cover the costs of making import eligibility determinations, and an annual fee or fees to cover the costs of processing the bond furnished to the Customs Service. The purpose of this notice is to adopt appropriate fees for FY 1991, which begins October 1, 1990. A notice of proposed rulemaking on this subject was published on August 31, 1990 (55 FR 35694).

One comment was received on the proposal, from Liphardt & Associates, Inc., a registered importer. The comment was in general opposition to the Imported Vehicle Safety Compliance Act of 1988, and did not address the specific fees proposed in the August notice. Therefore, the agency is adopting all fees as proposed.

Requirements of the Fee Regulation

Section 594.6 Annual Fee for Administration of the Importer Registration Program

Section 108(c)(3)(A)(iii) of the Vehicle Safety Act provides that registered importers must pay "such annual fee as the Secretary establishes to cover the cost of administering the registration program * * *." The annual fee attributable to the registration program is payable both by new applicants and by registered importers seeking to renew their registrations. The reader is referred to the notices of August 31, 1990, and September 29, 1989, for a fuller discussion of the fee and its components.

The initial component of the Registration Program Fee is the portion of the fee attributable to processing and acting upon registration applications. The agency estimates that this portion of the fee will be $86, and identical for both new applications and renewals.

Other costs attributable to maintenance of the registration program arise from reviewing a registrant's annual statement, and verifying the continuing validity of information already submitted. These costs also

include costs attributable to revocation or suspension of a registration.

The total portion attributable to maintenance of the registration program, as estimated by NHTSA, is approximately $169. When added to the $86 representing the registration application (or annual renewal) component, the cost per applicant or renewal equals $255. Therefore, NHTSA has determined that the annual registration fee, for the period October 1, 1990 through September 30, 1991, will be $255. In the event that an application is denied or withdrawn, NHTSA will refund all but $86 of this amount, or $169.

Sections 594.7 and 594.8 Fees to Cover Agency Costs in Making Importation Eligibility Determinations

Section 108(c)(3)(A)(iii)(II) also requires Registered Importers to pay "such other annual fee or fees as the Secretary reasonably establishes to cover the cost of * * * making the determinations under this section." Pursuant to part 593, these determinations are whether the vehicle sought to be imported is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, and certified as meeting the Federal standards, and whether it is capable of being readily modified to meet those standards, or, alternatively, where there is no substantially similar U.S. motor vehicle, whether the safety features of the vehicle comply with or are capable of being modified to comply with the U.S. standards. These determinations are made pursuant to petitions submitted by Registered Importers or manufacturers, or pursuant to determinations made upon the Administrator's initiative. The reader is also referred to the August 31, 1990, and September 29, 1989, notices for a fuller discussion of the costs factors of such determinations.

The agency estimated the total direct and indirect costs for a determination involving a substantially similar vehicle at $1,558.68, and for a non-similar vehicle at $2,151.61. In this light, a fee of $1,560 for substantially similar vehicle determinations, and one of $2,150 for those that are not substantially similar, appeared to fulfill the statutory directive, and was adopted for FY 1990.

Costs appeared similar for those determinations made upon the agency's own initiative, and the same fee was adopted for recovery of costs. The principal issue here was how such costs were to be recovered in the absence of a petitioner. The method adopted was that it be paid by the first Registered Importer who furnished a certificate of conformity covering such vehicle after NHTSA's determiation on its own initiative.

In actuality, the determination process during FY 1990 worked in a different manner than NHTSA contemplated. Applications for registration as importers were not submitted as quickly as expected, with the result that no importer had been registered by the effective date of the 1988 amendments, January 31, 1990, and no peititions filed. Once the initial Registered Importers had been appointed, NHTSA became aware of their reluctance to file determination petitions because of the petition fee. Sensing that an unintended burden on international commerce might result as a consequence, the agency proceeded to propose determinations on its own initiative with respect to vehicles that it believed were properly categorized as "substantially similar." However, the requirement that the entire fee be payable by the first person importing a vehicle under such a determination also was viewed by registered importers as inequitable, and a requirement that would cause hardship. In the comments on the agency's tentative determination, recommendations were made that the fee be split equally among all registered importers, or among the first five or ten vehicles imported under that determination. NHTSA met with registered importers and other interested persons on June 28, 1990, and the matter was discussed in further detail. The registered importers asked NHTSA if it could not impose a flat fee upon each vehicle imported which, like the bond processing fee, would be payable at the time the registered importer submitted certification for the vehicle.

As NHTSA commented in the proposal of August 31, 1990, it is interested in accommodating this view. The impostion of a flat fee per vehicle has the regulatory virtue of simplicity; it is easily understood by the regulated parties and it is easily administered by the agency. The difficult part comes in reconciling the sums realized with actual agency expenses. If the agency estimates that registered importers will conform 200 vehicles in 1991 that are covered by eligibility determinations made in FY91, and that a fee of $100 is appropriate for each, the agency may receive $20,000 in fees. That sum equals the cost of 13 determinations of substantial similarity at the FY90 fee level. Alternatively, this approach would represent 9 determinations of eligibility for non-similar vehicles. The problem is that, although the agency can estimate its costs per determination, it cannot estimate in advance with any degree of accuracy how many determinations it will have to make in the coming fiscal year, nor the basis on which the determinations would be made.

The agency reviewed the fee provisions of the 1988 Act, and found no requirement that it recover its costs in the fiscal year in which they are incurred, or that it be payable by any specific person in any specific manner. NHTSA believed that this flexibility and the provision of the Act which allows it to adjust fees on a yearly basis afforded it a mechanism by which fees can be adjusted to compensate for NHTSA's actual expenses. For example, if the fees received in one fiscal year exceed NHTSA's costs, the overage can in effect be applied to the following year and be considered in determining the fee to be paid for the next fiscal year. Similarly, if NHTSA underestimated its costs, the fee may be adjusted upward in the ensuing fiscal year. NHTSA's limited experience to date indicates that petitions, or determinations on the Administrator's initiative, may vary in issues and complexity, and are likely to consume more time than the agency initially estimated. In addition, the fairest way to recover costs of determinations made on the agency's initiative appears to be to place the burden directly upon the importers of all such vehicles.

Therefore, with respect to FY 1991, NHTSA proposed a restructuring of its fee schedule. The cost basis previously adopted remained at $1,560 for substantially similar determinations, and at $2,150 for others. However, under the restructuring, the fee for a vehicle imported under a determination made on the agency's initiative would not be payable by a Registered Importer, but be payble by the importer of any vehicle covered by any determination made on the agency's initiative. The fee for a vehicle imported under a determination pursuant to a petition would be payable in part by the petitioner (who would still bear some of the cost burden, and not be excused totally from this requirement), and in part by importers. However, the fee to be charged for a vehicle would not be a pro rata share of the costs of the agency in making the eligibility determination for that type of vehicle, but a pro rata share of the costs in making all the eligibility determinations in the fiscal year, adjusted for previous shortfalls and overages.

NHTSA estimated that 610 vehicles may be imported in FY 1991 by registered importers, or persons having contracts with them. It further estimated

that 400 of these vehicles may be imported pursuant to determinations of substantial similarity that would be made before October 1, 1990, and which would be subject to the fee structure in effect for FY 1990. The remaining 210 vehicles would be covered by determinations made in FY 1991. Of the 210 vehicles, the agency estimated that 30 would be covered by determinations made on its own initiative, and 180 pursuant to determinations made pursuant to petitions.

Of the determinations made pursuant to petitions, NHTSA estimated that 10 petitions would be filed, 8 of which would cover substantially similar vehicles and 2 of them that would not. The estimated total cost of these determinations is $16,780 representing the sum of $12,480 (8 × $1,560) for determinations of substantial similarity, and $4,300 (2 × $2,150) for the remainder. The agency proposed a filing fee of $100 for substantial similarity petitions, and of $500 for those that are not. On this basis, the petitions would bear $1,800 of the total costs (8 × $100 + 2 × $500). Subtracting $1,800 from the total costs leaves $14,980 to be borne by the importers of the 180 vehicles. Thus, NHTSA proposed that importers of vehicles covered by petition determinations pay a fee of $83.

The agency estimated that it may make 3 determinations of substantial similarity on its own initiative in the next fiscal year, and no determinations on the alternative basis. Thus the total costs to be recovered would be $4,680. As there would be no petitioner in such instances from whom a fee may be obtained, the agency proposed that importers bear the full burden of these costs. Assuming that 30 vehicles are imported that are covered by initiative determinations, the agency proposed that each vehicle be subject to a fee of $156. The $83 or $156 would be forwarded to NHSTA by the Registered Importer along with the bond processing fee and the certificate of compliance.

These fees have been adopted as proposed.

NHTSA will use a year of July 1–June 30 as the basis of its calculations for the next fiscal year. This is because of the necessity and time required to prepare and publish proposed fees, to allow a sufficient amount of time to comment upon them, and to prepare and issue a final rule not later than September 30.

Section 594.9 Fee to Recover the Costs of Processing the Bond

Section 108 (c)(3)(A)(iii)(II) also requires a registered importer to pay "such annual fee or fees as the Secretary reasonably establishes to cover the cost of processing the bond furnished to the Secretary of the Treasury" upon the importation of a nonconforming vehicle to ensure that the vehicle will be brought into compliance within a reasonable time, or if the vehicle is not brought into compliance within such time, that it is exported without cost to the United States, or abandoned to the United States.

The statute contemplates that NHTSA make a reasonable determination of the cost to the United States Custom Service of processing the bond. For a fuller discussion of these costs, the reader is again referred to the notices of August 31, 1990, and September 29, 1989.

As of August 31, 1990, there had been no entries pursuant to this provision. Accordingly, NHTSA based its calculations on those previously submitted by Customs, adjusted to reflect salary increases. This would result in a slight increase in the present bond processing fee of $4.35. Therefore, NHTSA proposed and is adopting $4.55 as the bond processing fee for FY 1991. The rule also clarifies that the fee applicable to a particular vehicle is based upon the date of importation, not the date the certificate of conformity is furnished.

Effective Date

Pursuant to 5 U.S.C. 553(d)(3), a rule may be published less than 30 days before its effective date, for good cause found. Section 108(c)(3)(B) requires that the fee applicable in any fiscal year shall be established by NHTSA before the beginning of each such year. Therefore, NHTSA finds good cause for an effective date of September 30, 1990, which is earlier than 30 days after publication of the rule, so that the fees established by the rule will be applicable in Fiscal Year 1991, which begins October 1, 1990.

Impacts

After considering the impacts of this rulemaking action, NHTSA has determined that the action is not major within the meaning of Executive Order 12291 "Federal Regulation". It further implements Public Law 100–562 under which fees may be established to cover the costs of administering the program for registration of importers of vehicles not originally manufactured to conform to the Federal motor vehicle safety standards, of determinations that nonconforming vehicles are capable of conformity to the standards, and of reimbursing or advancing the U.S. Customs Service its costs in processing safety standards conformance bonds. It is not significant under Department of Transportation regulatory policies and procedures. The action does not involve any substantial public interest or controversy. There is no substantial effect upon state and local governments. There is no substantial impact upon a major transportation safety program. Both the number of registered importers and determinations are estimated to be comparatively small, and the number of vehicles to be imported by or through such importers from October 1, 1990 through September 30, 1991, is estimated to be 610. Nevertheless, a regulatory evaluation analyzing the economic impact of the final rule adopted on September 29, 1989, was prepared, and is available for review in the docket, as part of the Regulatory Flexibility Analysis.

NHTSA has analyzed this final rule for purposes of the National Environmental Policy Act. The final rule will not have a significant effect upon the environment because it is anticipated that the annual volume of motor vehicles imported through registered importers will not vary significantly from that existing before promulgation of the rule.

The agency has also considered the effects of this final rule in relation to the Regulatory Flexibility Act. I certify that this final rule will not have a significant economic impact upon a substantial number of small entities. Although entities that currently modify nonconforming vehicles are small businesses within the meaning of the Regulatory Flexibility Act, the agency has no reason to believe that a substantial number of these companies could not pay the fees adopted by this regulation. However, some small businesses currently conforming vehicles may not choose to register as importers because of the fee and other requirements. Accordingly, these businesses will no longer be able to perform conformance work on nonconforming vehicles. The cost to owners or purchasers of modifying nonconforming vehicles to conform with the safety standards may be expected to increase to the extent necessary to reimburse the registered importer for the fees payable to the agency for the cost of administering the registration program and making eligibility determinations, and to compensate Customs for its bond processing costs. Governmental jurisdictions will not be affected at all since they are generally neither importers nor purchasers of nonconforming motor vehicles.

The agency has analyzed the final rule in accordance with the principles and criteria contained in Executive Order

12612 "Federalism" and determined that the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 49 CFR Part 594

Imports, Motor vehicle safety, Motor vehicles.

PART 594—[AMENDED]

In consideration of the foregoing, 49 CFR part 594 is amended as follows:

1. The authority citation for part 594 continues to read as follows:

Authority: Public Law 100–562, 15 U.S.C. 1401, 1407; delegation of authority at 49 CFR 1.50.

2. Section 594.3 is revised to read:

§ 594.3 Applicability.

This part applies to any person who applies to NHTSA to be granted the status of Registered Importer under part 592 of this chapter, to any person who has been granted such status, to any manufacturer not a Registered Importer who petitions the Administrator for a determination pursuant to part 593 of this chapter, and to any person who imports a motor vehicle into the United States pursuant to such determination.

3. Sections 594.5 (c), (d), (e), and (g) are revised to read:

§ 594.5 Establishment and payment of fees.

* * * * *

(c) An applicant for status as Registered Importer shall submit an initial annual fee with the application. A Registered Importer shall pay an annual fee not later than October 31 of each year. The fee is that specified in § 594.6(i).

(d) A person who petitions the Administrator for a determination that a vehicle is eligible for importation shall file with the petition the fee specified in § 594.7(e).

(e) A person who imports a vehicle covered by a determination of the Administrator shall pay the fee specified in either § 594.8 (b) or (c), as appropriate. Such fee shall be transmitted to the Administrator by the Registered Importer responsible for such vehicle at the time it furnishes a certificate of conformity pursuant to § 591.7(e) of this chapter.

* * * * *

(g) No application or petition will be accepted for filing or processed before payment of the full amount specified. Except as provided in § 594.6(d), a fee shall be paid irrespective of NHTSA's disposition of the application, or of a withdrawal of an application.

§ 594.6 [Amended]

* * * * *

4. In § 594.6, paragraphs (a), (b), (d), (h), and (i), the dates "October 1, 1989" and "September 30, 1990" are revised respectively to read "October 1, 1990" and "September 30, 1991."

5. Section 594.7 is amended by revising paragraph (e) and adding paragraph (f) to read:

§ 594.7 Fee for filing petition for a determination whether a vehicle is eligible for importation.

* * * * *

(e) For petitions filed from October 1, 1990 through September 30, 1991, the fee payable for a petition seeking a determination under paragraph (a)(1) above is $100. The fee payable for a petition seeking a determination under paragraph (a)(2) above is $500. If the petitioner requests an inspection of a vehicle, the sum of $550 shall be added to such fee. No portion of this fee is refundable if the petition is withdrawn or denied.

(f) In adopting a fee for the next fiscal year, the Administrator employs data based upon the cost of determinations and the amount of fees received for the 12-month period ending June 30 of the fiscal year preceding that fiscal year.

6. Section 594.8 is revised to read:

§ 594.8 Fee for importing a vehicle pursuant to a determination by the Administrator.

(a) A fee as specified in paragraphs (b) and (c) of this section shall be paid by each importer of a vehicle covered by a determination made under part 593 of this chapter to cover the direct and indirect costs incurred by NHTSA in making such determinations.

(b) If a determination has been made pursuant to a petition, the fee for each vehicle is $83. The direct and indirect costs that determine the fee are those set forth in §§ 594.7(b), (c), and (d).

(c) If a determination has been made pursuant to the Administrator's initiative the fee is $156. The direct and indirect costs that determine the fee are those set forth in §§ 594.7(b), (c), and (d), and references to "petition" shall be understood as relating to NHTSA's documents that serve as a basis for initiating determinations on its own initiative.

7. Section 594.9 is revised to read:

§ 594.9 Fee for reimbursement of bond processing costs.

* * * * *

(c) The bond processing fee for each vehicle imported from October 1, 1990, through September 30, 1991, for which certificate of conformity is furnished, is $4.55.

Issued on September 28, 1990.

Jeffrey R. Miller,

Deputy Administrator.

[FR Doc. 90–23420 Filed 9–28–90; 3:53 pm]

BILLING CODE 4910–59–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 900511–0111]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure.

SUMMARY: NOAA announces the closure of the commercial salmon fishery in the exclusive economic zone (EEZ) from Horse Mountain, California, to the U.S.-Mexico border at midnight, September 21, 1990, to ensure that the subarea coho salmon quota is not exceeded; the regularly scheduled commercial salmon fishery in this subarea reopens for all salmon species except coho salmon at 0001 hours local time, September 22, 1990. The Director, Northwest Region, NMFS (Regional Director), has determined that the commercial fishery quota of 5,000 coho salmon, which was reserved preseason for this subarea, will be reached, and the fishery should be closed at midnight, September 21, 1990. This action is necessary to conform to the preseason announcement of 1990 management measures. This action is intended to ensure conservation of coho salmon.

DATES: *Effective:* Closure of the EEZ from Horse Mountain, California, to the U.S.-Mexico border to commercial fishing for all salmon species is effective at 2400 hours local time, September 21, 1990. The regularly scheduled commercial fishery between Horse Mountain, California, and the U.S.-Mexico border reopens for all salmon species except coho salmon effective at 0001 hours local time, September 22, 1990. Actual notice to affected fishermen was given prior to those times through a special telephone hotline and U.S. Coast Guard Notice to Mariners broadcasts as provided by 50 CFR 661.20, 661.21, and 661.23 (as amended May 1, 1989). *Comments:* Public comments are invited until October 15, 1990.

ADDRESSES: Comments may be mailed to Rolland A. Schmitten, Director, Northwest Region, NMFS, 7600 Sand Point Way NE., BIN C15700, Seattle, WA 98115–0070; or E. Charles Fullerton, Director, Southwest Region, NMFS, 300 S. Ferry Street, Terminal Island, CA 90731–7415. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the office of the NMFS Northwest Regional Director.

FOR FURTHER INFORMATION CONTACT: William L. Robinson (Northwest Region, NMFS), 206–526–6140; or Rodney R. McInnis (Southwest Region, NMFS), 213–514–6199.

SUPPLEMENTARY INFORMATION: Regulations governing the ocean salmon fisheries at 50 CFR part 661 specify at § 661.21(a)(1) that "When a quota for the commercial or the recreational fishery, or both, for any salmon species in any portion of the fishery management area is projected by the Regional Director to be reached on or by a certain date, the Secretary will, by notice issued under § 661.23, close the commercial or recreational fishery, or both, for all salmon species in the portion of the fishery management area to which the quota applies as of the date the quota is projected to be reached."

In its preseason notice of 1990 management measures (55 FR 18894, May 7, 1990), NOAA announced that a separate catch quota of 5,000 coho salmon has been reserved preseason for the commercial fishery from Horse Mountain, California, to the U.S.-Mexico border. Commercial fishing in this subarea under the 5,000 coho salmon reserve began on August 1, 1990 (55 FR 32916, August 13, 1990).

According to the best available information, the commercial fishery catch in the subarea is projected to reach the 5,000 coho salmon reserve by midnight, September 21. Therefore, commercial salmon fishing from Horse Mountain, California, to the U.S.-Mexico border, is closed effective 2400 hours local time, September 21. In accordance with the preseason notice of 1990 management measures, the regularly scheduled commercial fishery between Horse Mountain, California, and the U.S.-Mexico border, will reopen for all salmon species except coho salmon effective 0001 hours local time, September 22, 1990.

In accordance with the revised inseason notice procedures of 50 CFR 661.20, 661.21, and 661.23, actual notice to fishermen of this action was given prior to the times listed above by telephone hotline number (206) 526–6667 and by U.S. Coast Guard Notice to Mariners braodcasts on Channel 16 VHF–FM and 2182 KHz. NOAA issues this notice of closure of the commercial fishery in the EEZ from Horse Mountain, California, to the U.S.-Mexico border which is effective 2400 hours local time, September, 21, 1990, and reopening of the commercial fishery in the same portion of the EEZ for all salmon species except coho salmon which is effective 0001 hours local time, September 22, 1990.

The Regional Director consulted with representatives of the Pacific Fishery Management Council and the California Department of Fish and Game regarding this action. The State of California will manage the commercial fishery in State waters adjacent to this area of the EEZ in accordance with this federal action. This notice does not apply to other fisheries which may be operating in other areas.

Because of the need for immediate action, the Secretary of Commerce has determined that good cause exists for this notice to be issued without affording a prior opportunity for public comment. Therefore, public comments on this notice will be accepted for 15 days after filing with the Office of the Federal Register, through October 15, 1990.

Other Matters

This action is authorized by 50 CFR 661.23 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 28, 1990.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90–23441 Filed 9–28–90; 5:02 pm]

BILLING CODE 3510–22–M

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50 CFR Part 661

[Docket No. 900511–0111]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of reopening.

SUMMARY: NOAA announces the reopening of the ocean commercial salmon fishery in the exclusive economic zone (EEZ) from Leadbetter Point, Washington, to Cape Falcon, Oregon, on September 22, 1990. This fishery was closed at midnight, September 19, 1990, based on projections that the 23,600 coho salmon quota had been reached. Evaluation of landings data following closure of the fishery indicates that sufficient coho salmon remain to allow additional fishing. This action is intended to maximize the harvest of coho salmon in this subarea without exceeding the ocean share of salmon allocated to the commercial fishery.

DATES: *Effective:* Reopening of the EEZ to commercial salmon fishing from Leadbetter Point, Washington, to Cape Falcon, Oregon, is effective 0001 hours local time September 22, 1990. Actual notice to affected fishermen was given prior to that time through a special telephone hotline and U.S. Coast Guard Notice to Mariners broadcasts as provided by 50 CFR 661.20, 661.21, and 661.23 (as amended May 1, 1989). *Comments:* Public comments are invited until October 15, 1990.

ADDRESSES: Comments may be mailed to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Seattle, WA 98115–0070. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the office of the NMFS Northwest Regional Director.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206–526–6140.

SUPPLEMENTARY INFORMATION: Regulations governing the ocean salmon fisheries at 50 CFR part 661 specify at § 661.21(a)(2) that "If a fishery is closed under a quota before the end of a scheduled season based on overestimate of actual catch, the Secretary will reopen that fishery in as timely a manner as possible for all or part of the remaining original season provided the Secretary finds that a reopening of the fishery is consistent with the management objectives for the affected species and the additional open period is no less than 24 hours."

Management measures for 1990 were effective on May 1, 1990 (55 FR 18894, May 7, 1990). The 1990 commercial fishery for all salmon in the subarea from Leadbetter Point, Washington, to Cape Falcon, Oregon, has been open August 30 through September 14, and September 18 through September 19. Each closure was based on projections that the revised subarea quota of 23,600 coho salmon would be reached by that date. However, subsequent evaluation of landing data indicates that the closures were based on overestimates of

actual catch, and the quota had not been reached.

According to the best available information, commercial catches through September 19, 1990, totaled 20,800 coho salmon, leaving 2,800 coho salmon available for harvest in the subarea coho quota. This amount of available coho salmon has been determined to be sufficient for additional fishing beginning on September 22, 1990. This action is being taken in as timely a manner as possible and is consistent with the management objectives for coho salmon in this subarea. As in the original season, Conservation Zone 1, the Columbia River mouth, is closed (55 FR 18894, May 7, 1990).

In accordance with the revised inseason notice procedures of 50 CFR 661.20, 661.21, and 661.23, actual notice to fishermen was given prior to 0001 hours local time, September 22, 1990, by telephone hotline number (206) 526-6667 and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and 2182 KHz. NOAA issues this notice of the reopening of the commercial fishery in the EEZ from Leadbetter Point, Washington, to Cape Falcon, Oregon, which is effective 0001 hours local time September 22, 1990. This notice does not apply to treaty Indian fisheries or to other fisheries which may be operating in other areas.

The Regional Director consulted with representatives of the Pacific Fishery Management Council, the Washington Department of Fisheries, and the Oregon Department of Fish and Wildlife regarding this reopening. The States of Washington and Oregon will manage the commercial fishery in State waters adjacent to this area of the EEZ in accordance with this federal action.

Because of the need for immediate action, the Secretary of Commerce has determined that good cause exists for this notice to be issued without affording a prior opportunity for public comment. Therefore, public comments on this notice will be accepted for 15 days after filing with the Office of the Federal Register, through October 15, 1990.

Other Matters

This action is authorized by 50 CFR 661.23 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 28, 1990.

David S. Crestin,

Acting Director, Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90-23442 Filed 9-28-90; 5:02 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 55, No. 193
Thursday, October 4, 1990

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1046

[DA-90-002, Docket No. A0-123-A60]

Milk in the Louisville-Lexington-Evansville Marketing Area; Recommended Decision and Opportunity To File Written Exceptions on Proposed Amendments to Tentative Marketing Agreement and to Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision recommends changes in the pooling requirements for a city plant and a country plant under the Louisville-Lexington-Evansville milk order. The proposed amendments were proposed or supported by several dairy farmer cooperatives that pool a substantial amount of milk on the market. One recommended change would count milk diverted from a city plant to other plants as a receipt of the city plant in determining the city plant's Class I utilization for pool plant status. Another recommended amendment would apply a "net shipment" concept to movements of milk between a country plant and a city plant in determining whether the country plant qualifies to be a pool plant. The recommended changes are based on the record of a public hearing held in Louisville, Kentucky, on March 13–14, 1990. These changes are needed in order to make more milk available to meet the fluid needs of the market.

DATES: Comments are due on or before October 25, 1990.

ADDRESSES: Comments (four copies) should be filed with the Hearing Clerk, Room 1083, South Building, United States Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Robert F. Groene, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 447–2089.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to (5 U.S.C. 605(b)), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. The amendments would promote orderly marketing of milk by producers and regulated handlers.

Prior document in this proceeding:

Notice of Hearing: Issued February 13, 1990; published February 20, 1990 (55 FR 5852).

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to proposed amendments to the tentative marketing agreement and the order regulating the handling of milk in the Louisville-Lexington-Evansville marketing area. This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900).

Interested parties may file written exceptions to this decision with the Hearing Clerk, U.S. Department of Agriculture, Washington, DC 20250, by the 21st day after publication of this decision in the Federal Register. Four copies of the exceptions should be filed. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The proposed amendments set forth below are based on the record of a public hearing held at Louisville, Kentucky, on March 13–14, 1990, pursuant to a notice of hearing issued February 13, 1990 (55 FR 5852).

The material issues on the record of hearing relate to:

1. Pooling standards for a city plant, and
2. Pooling standards for a country plant.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. Pooling standards for a city plant. The order should be amended to provide that for a city plant to qualify as a pool plant its fluid milk disposition, except filled milk, must be not less than 50 percent in each of the months of August through November and January and February and 40 percent in each of the other months of the plant's receipts of fluid milk products. The percentages should be based on the total quantity of milk received during the month at the plant, except filled milk, and should include milk diverted from the plant.

The current pool plant provisions require a city plant to dispose of as Class I milk not less than 30 percent during the months of May through October and not less than 50 percent in all other months of the plant's receipts of fluid milk products during the 2 months immediately preceding or the current month if the percentages cannot be ascertained for the 2 preceding months.

Dairymen, Inc. (DI), proposed the changes to the city plant pooling requirements that are adopted herein. A witness for DI, who was also authorized to represent Southern Milk Sales, Inc. (SMS), testified that DI supplies about 40 percent of the milk and SMS supplies about 5 to 6 percent of the milk pooled on the Louisville-Lexington-Evansville order. He said that DI supplies milk to all the city plants in the market and SMS delivery milk only to the Kroger plant at Winchester, Kentucky.

The witness for DI said that the basic proposed changes to the city plant provisions are the inclusion of diversions from the city plant in computing the city plant's Class I overall utilization percentage and the increased Class I percentage requirements during the months of May through October. In addition, DI's proposal would switch the qualifying period from the previous two months to the current month. Also, the Class I utilization for December would

be lowered from 50 percent to 40 percent in recognition of the impact of Christmas on the need for Class I milk at city plants.

The spokesman for DI testified that while the current order does not contain any specific provisions that limit overall diversions of producer milk to nonpool plants, the "touch base" provision does place some limit on diversions. He said that under the current provisions over 70 percent of the milk pooled by a city plant can be diverted to nonpool plants.

The witness for DI said that the Secretary of Agriculture in developing the Federal milk marketing order system decided to regulate only milk suitable for human consumption in fluid form. He testified that since Federal milk orders are designed primarily to regulate milk for fluid use, it is necessary to establish standards for determining which milk is eligible to participate in the higher returns for milk sold for Class I use.

The spokesman for DI said that the association of Grade A milk supplies with the fluid milk market does require resolution of conflicting interests. Pooling standards for milk should not be so high that they force uneconomic shipments to plants for the sole purpose of qualifying such milk in the marketwide pool. At the same time, he said appropriate minimum standards are needed to avoid the possibility that milk will share in the Class I use even though it will not be available or delivered to the fluid market when needed.

The DI witness said that, historically, this marketing area has functioned as a reserve supply area for Federal and State order areas to the east and south. He said that marketing conditions in this area have changed and there has been an increase in demand for milk as a result of increased consumption in the area and in nearby areas. Also, there has been an increase in demand for milk, he said, because of the new Kroger plant at Winchester, Kentucky, and to some extent the Kroger plant at Murfreesboro, Tennessee.

The spokesman for DI stated that data for prior years is misleading because of a number of changes in the market that have taken place. He indicated that the Haywood Dairy, a city plant in Louisville, Kentucky, closed in July 1988, the Borden city plant at Lexington, Kentucky, closed in January 1990, the Kroger plant at Winchester, Kentucky, became a city plant in August 1988 and the Southern Belle Dairy plant at Somerset, Kentucky, shifted regulation to the Tennessee Valley order in July 1989.

The spokesman for DI said that the record shows that the Class I utilization for the market for the months of August through November and January and February exceeds 70 percent. He said that the proposed city plant's utilization percentages are about 20 percentage points below the market's Class I utilization for such period. He indicated that 40 percent requirement for the months of March through July and December would be substantially below the market's average Class I utilization during such months. City plants, he said, should not have any difficulty meeting the proposed Class I utilization requirements.

Milk Marketing Inc., (MMI) proposed that the city plant pooling requirements be changed to include milk diverted from the plant as receipts of the plant. MMI's proposal in the notice of hearing would have required Class I disposition of not less than 50 percent in each of the months of November through April and 30 percent in each of the other months. At the hearing MMI withdrew their proposal and supported DI's proposal.

The witness for MMI testified that the qualifying percentages for a city plant should be based upon market experience and should be designed to prevent abuses of the marketwide pooling system. He indicated that DI's proposal more nearly equates provisions of the order with the actual marketing practices of the market over the last several years.

The Kroger Company (Kroger) which operates a city plant at Winchester, Kentucky testified in support of DI's city plant proposal. Kroger's witness stated that increased performance standards are needed especially during the months of August and September when the market experiences a substantial increase in demand for milk for fluid use. He also indicated that an increase in performance requirements from 30 percent to 40 percent for the months of May through July is warranted due to the increased need for Class I milk in the last 4 years.

Dean Foods Company (Dean) also proposed that the city plant pooling requirements be changed. Dean's proposal would require Class I disposition of not less than 50 percent in each of the months of August through November and January and February and 30 percent in each of the other months of a city plant's receipts of fluid milk products.

As the witness for Dean indicated, the only difference between DI's proposal for city plants and Dean's proposal of that for the months of March through July and December, Dean's requirement is 10 percentage points less. He testified that Dean's proposal reflected the 20 points in variation in the Class I disposition standards for a pool distributing plant for the months of short production and the months of flush production that exists under the Tennessee Valley order.

A representative of the National Farmers Organization, Inc. (NFO) participated in the public hearing and filed a brief in support of Dean's proposed city plant Class I disposition percentages. NFO also supported that part of DI's proposal that included milk diverted from a city plant as well as physical receipts at the plant in the volume of milk upon which the city plant's Class I percentage is calculated.

The Class I utilization percentages of producer receipts for 1987, 1988, and 1989 averaged 66, 67 and 66, respectively. For the 3-year period the monthly Class I utilization percentages for the months of August–November and January and February ranged from a low of 63 to a high of 78. During the same 3-year period the monthly Class I utilization percentages for the months of March–July and December ranged from a low of 58 to a high of 71.

There was no objection to the 50 percent standard for the months of August through November and January and February by any of the participants at the hearing. Such standard is from 13 to 26 percentage points less than the average Class I utilization for such months during 1987 through 1989. The 50 percent requirement is warranted in view of the market's Class I utilization during the months of August through November and January and February and is hereby adopted.

The 40 percent standard for the months of March through July and the month of December is a reasonable requirement in view of the market's Class I utilization in such months. The requirement is from 18 to 31 percentage points less than the average Class I utilization for such months during 1987 through 1989. In that regard, the 40 percent requirement for the months of March through July and December is less stringent that the 50 percent requirement during other months of the year. Accordingly, the 40 percent standard appears to be a reasonable requirement for the months of March through July and December and is hereby adopted.

The proposal by DI to include diverted milk from a city plant in the overall Class I disposition standard for pooling such plant should be adopted. In the absence of such requirement the pooling standards adopted herein for a city plant would be virtually meaningless. Unless diversions to another plant are included in the city plant's receipts, the city plant could meet the established

pooling standard by reducing the volume of milk physically received at the plant and diverting such milk to a nonpool plant for manufacturing use.

The DI proposal to switch the qualifying period for city plants from the previous two-month period to the current month should also be adopted. Under the current order, the overall Class I disposition percentage requirements are based on receipts of milk received at the city plant for the previous two months. Basing the qualifying period on the current month is a more straight forward method of determining if a plant qualifies as a city plant.

2. Pooling standards for a country plant. The order should be amended to provide that for a country plant to qualify as a pool plant it must deliver milk or skim milk to city plants during any of the months of August through November and January and February in an amount not less than 50 percent and during other months of the year in an amount not less than 40 percent of the country plant's receipts of fluid milk. These percentages should be based on milk that is physically received at the plant as well as milk diverted from the plant but should not include milk diverted to the country plant from other plants.

The country plant pooling requirements should also provide that in determining whether a country plant has met the required shipments, milk or skim milk transferred to diverted from a city plant to a country plant (or a nonpool plant located at such site or a nonpool plant operated by the same company) shall be offset against the country plant's transfers or diversions to such city plant. This offset shall apply to the extent that such milk or skim milk movements by the city plant exceed 5 percent of the milk or skim milk transferred or diverted from the country plant. The order should continue to provide that country plant may include diverted milk from the country plant to the city plant in meeting up to one-half of its shipping requirements.

The order should also be amended to provide for automatic pooling for a country plant during the period of March through July if the plant qualifies as a pool plant during each of the preceding months of August through February. Pool status would continue to be automatic unless the operator of such country plant notifies the market administrator in writing on or before February 15 of the withdrawal of the plant from the pool for the following months of March through July.

The order currently provides for a 50 percent shipping requirement for the months of September through February and a 40 percent shipping requirement for the other months of the year. The order also provides for automatic pooling of a country plant for the months of March through August provided that the plant qualified as a pool plant in each month during the preceding September through February.

DI proposed a 50 percent minimum shipping requirement for a country plant for the months of August through November, January, and February and 40 percent in the other months. The witness for DU indicated such standards would be consistent with the performance standards proposed for city plants. Also, he said, the 40 percent requirement is consistent with the fact that additional milk is produced during this period. He indicated, too, that the country plant provisions should be modified to provide for automatic pooling for the months of March through July rather than February through July.

DI originally proposed, with respect to a country plant, that a 50 percent shipping requirement apply to the month of December. At the hearing, this 50 percent shipping requirement for the month of December was reduced to 40 percent. DU also proposed a net shipment offset provision that would apply to a country plant. Such proposal would offset milk or skim milk transferred or diverted from a city plant to a country plant against the country plant's transfers or diversions to the city plant.

On cross examination with respect to the "net shipment offset" provision, DI's spokesman clarified the application of such provision. If the plant operates both a Grade A receiving facility and a nonpool processing plant at the same location and the order recognized the two facilities as separate plants for pooling purposes, he said that the intent of the DI proposal is to apply the offset when the city plant transfers or diverts milk back to the country plant or to the nonpool plant.

The witness for DI testified that it is essential to the proper operation of the marketwide pool that minimum standards of performance be established to distinguish between those milk supplies that are primarily serving the fluid needs of the marketing area and those milk supplies that do not serve the fluid market in any way or to a degree that warrants their sharing in the Class I utilization. He indicated that performance standards should be such that Grade A milk supplies, a substantial proportion of which is associated with the fluid market, should be pooled and share in the marketwide equalization associated with the Class I sales. On the other hand, milk supplies casually or incidentally associated with the Class I needs should not be subject to complete regulation of the order or fully share in the Class I sales of plants serving the marketing area. In DI's view, permitting milk that is only casually or incidentally associated with the Class I needs of the market to participate in the marketwide pool does not assure milk being available when needed for Class I use. Also, the pooling of unneeded milk, primarily for manufacturing uses, reduces the blend price of other Grade A producers. It was DI's position that such pooling is contrary to the objectives of the Agricultural Marketing Agreement Act of 1937, as amended, and the history of the federal milk marketing order system.

The DI witness stated that the record shows there has been an increased demand for milk by Louisville city plants. He indicated that during the last half of 1988 and to a greater extent in the last half of 1989, there was not an adequate supply of locally produced milk made available to meet the fluid needs of city plants in the marketing area. He said that over 35 percent of the milk that had to be imported into the marketing area during 1988 and 1989 was acquired by DI from Michigan, Wisconsin and Minnesota. At the same time, he said, the Carnation country plant at Maysville, Kentucky, made little of its Grade A milk available to meet the market's fluid needs.

MMI supported DI's proposed changes to the country plant pooling requirements. The MMI witness said the MMI has pooled about 12 million pounds monthly on this market. All of this milk is delivered to the Kroger plant at Winchester.

The witness for MMI said that is organization had lost about 30 members to the Carnation plant at Maysville. This has required MMI to go outside the market, at an additional cost, in order to supply the Kroger plant at Winchester. The MMI spokesman said that for the period of January 1989 through January 1990, MMI brought in about 1.5 million pounds of outside supplemental milk for delivery to the Kroger plant at Winchester. He said that the record shows that for September 1989, 10 million pounds of other source milk were brought into the market, of which 5 million pounds were classified as Class I while 18 million pounds of producer milk were classified as Class III.

A witness for Kroger testified in support of DI's proposed revision of the country plant pooling requirements. He stated that the pooling requirements should be revised because more milk is

needed for the fluid market. He said that during the fall months of 1989, Kroger was not able to acquire all of the milk that was needed to supply the Winchester plant.

The Carnation Company (Carnation) proposed that a "call" provision be added to the country plant pooling provisions. Their proposal was intended as an additional method for pooling a country plant in the event of the adoption of DI's "net shipment" concept for a country plant.

The Carnation proposal would require that the country plant be located in the marketing area or if it is outside the marketing area, it would have to be located in the States of Kentucky or Indiana. In addition, the country plant must (1) receive a daily average of at least 25,000 pounds of milk from producers; (2) have shipped at least 45,000 pounds of milk to city plants in the previous 12 months; (3) have been a pool plant during the previous September–February period; and (4) agree to ship milk to city plants as requested by the market administrator. Carnation's "call" provision would provide that the market administrator could not require the country plant to ship milk in any given month that such shipments would exceed 25 percent of the country plant's milk receipts for the previous month unless the market administrator holds a meeting at which all interested parties are given the opportunity to appear and participate. Even though a meeting is held, the amount of milk that the country plant could be required to ship to city plants would be limited to 50 percent during the months of September through February and 40 percent in other months. Carnation's proposal provides that if the market administrator, after holding a public meeting, deems it necessary to require the country plant to ship more that 25 percent of its milk, such requested shipments would be limited to 3 months (month of the meeting plus the 2 following months).

The Carnation plant manager for the Maysville plant testified that the plant acquires about half of its milk supply from their own dairy farmers and the balance from Huntington Interstate Milk Producers Association. He said that most of their producers are small and that their milk (approximately 4 million pounds per month) is picked up in small tank trucks.

The Carnation witness said that if DI's proposed revision is adopted and Carnation has to give up half of its milk supply, they could not compete with other manufacturers of evaporated milk. He said that most of their competitors are pool plants in other markets.

The Carnation witness testified that Carnation's Maysville plant had been a pool plant on this order from September 1987 until January 1990 when the Borden distributing plant at Lexington closed. He said that Carnation now operates the Maysville plant as a nonpool plant but finds its difficult to compete with proprietary handlers and cooperatives that are able to pay a blend price for milk. The witness for Carnation said that for 1988, the average difference between the market's blend price and the Class III price was $1.27 and for 1989 it was $1.10. He said that for January and February 1990, the difference was $2.15 and $1.72, respectively.

The Carnation witness stated that their proposal would allow a plant, such as the Carnation plant, to serve the fluid market as needed and participate in the marketwide pool and still be able to use its milk supply most of the year for its own manufacturing requirements. He said that the "call" provision has worked reasonably well in other markets.

A witness for Armour, a country plant that also qualifies as a pool plant, testified in support of the Carnation proposal. He said that the Armour plant at Springfield, Kentucky, receives monthly about 6 million pounds of Grade A milk plus about 1 million pounds of manufacturing grade milk.

The Armour witness said that Armour has never failed to deliver milk upon request by a city plant that they were using for qualification purposes. Armour, he said, purchased milk last fall from Wisconsin, Minnesota and Michigan in order to supply the Armour plant at Springfield and to honor commitments to the city plant that Armour was supplying.

The witness for Armour said that last fall the Dean city plant in Louisville, at times, was receiving 70 to 75 percent of Armour's milk. He indicated that last fall Armour net shipped about 26 percent of their milk for a 6-month period and that this fall the amount could be higher.

A witness for Dean said that his company has been purchasing milk from Armour for about 7 years and there are months when Dean returns about as much milk as they receive from Armour. He said that Dean bottles milk only 4 days a week and that they purchase milk from Armour on the days that milk is needed for bottling. On weekends when Dean does not need its full supply of milk, Dean diverts milk to the Armour plant. It was his opinion that Armour was fulfilling its obligation as a country pool plant by making milk available for fluid use.

The Dean spokesman said that if DI's net shipment proposal is adopted that Dean could qualify Armour for pooling purposes.

DI's witness testified that he was authorized by MMI and SMS to testify in opposition to the Carnation proposal. He said that his testimony in support of DI's city plant and country plant proposals should be taken as opposition testimony to Carnation's proposal.

The DI witness said that there are cooperatives supplying the fluid needs of city plants pooled on this market that also operate manufacturing facilities. He indicated that such cooperatives would also like to operate their manufacturing plants when commodity market prices are favorable. It was his opinion that if the cooperatives took the same attitude as Armour or Carnation, the Louisville city plants would find it very difficult to attract an adequate supply of local milk for fluid use.

The DI witness said that marketing conditions in this market are very different from the New York-New Jersey marketing area that has a "call" provision. He said marketing conditions in this market do not require milk to be channeled through country plants for delivery to city plants. In his view, the only purpose of country plant facilities has been to pool milk on the order that is intended primarily for Class III use at the manufacturing plants which such country plants operate in conjunction with their Grade A receiving operations. He said that DI would support the elimination of the country plant pooling provisions.

The National Farmers Organization, Inc. (NFO), filed a brief opposing Carnation's proposal. NFO indicated that the record demonstrated that country plants had qualified for pool plant status by shipping certain volumes of milk to city plants and then receiving milk back from the city plants. The brief stated that the order should not encourage this practice which is wasteful and uneconomic.

NFO stated that Carnation's proposed call provision is inconsistent with the overall marketing conditions in the area. The provision would establish a reserve supply plant situation where country plants would only ship milk if the market administrator required such shipments via a call for additional fluid milk. It was NFO's position that in a market with Class I utilization in excess of 60 percent, an open-ended call provision is inappropriate.

In NFO's view, the country plant language should be amended to include the "net shipment" language proposed by DI. However, NFO suggested that the

percentages should be adjusted during the shipping months to establish a range of a minimum of 25 percent to a maximum of 50 percent. The market administrator would have the discretion to direct more than the minimum amount of 25 percent to be shipped on the basis of information available on the need for additional milk. Such shipments to city plants would be solely for Class I usage.

Since September 1987 the Carnation plant at Maysville, Kentucky, has operated at one location both a Grade A receiving operation and a nonpool plant operation. From September 1987-December 1989 the plant's Grade A operation was pooled as a country plant under the Louisville order. Carnation qualified its country plant as a pool plant by shipments from the Grade A facility to a city plant at Lexington, Kentucky, operated by the Borden Company. Then, in January 1990 Borden closed its Lexington plant. As a consequence of the Borden plant closing, the Carnation plant lost its pooling base and became a nonpool plant.

The Carnation plant during the time that it was a pool plant under the order supplied city plants with less than 1 percent of the milk that the country plant was pooling under the order. The remainder of the milk that the Carnation plant supplied to the Borden plant was transferred or diverted from the Carnation plant to the Borden city plant at Lexington, and was then reloaded for shipment back to the Carnation plant. The milk was then processed into manufactured products.

In addition to the milk that the Carnation plant pooled on the Louisville order, the plant also obtained milk from Huntington Interstate, a cooperative association. The milk supplied by the cooperative represented about one-half of the Carnation plant's milk supply.

It is obvious that the Carnation plant when it was pooled under the Louisville order was furnishing only minimal amounts of milk to city plants for fluid use. The plant's primary purpose in becoming a pool plant was to obtain a milk supply that the plant could utilize for manufacturing. As a pool plant, it was able to return a blend price to its dairy farmers for milk that was used almost exclusively in manufacturing uses.

The Armour Company operates a Grade A receiving operation as well as a manufacturing plant at Springfield, Kentucky. The Grade A receiving operation qualifies as a country pool plant under the Louisville order by deliveries of milk to the Dean plant at Louisville. Armour also operates another nonpool plant at Elizabethtown, Kentucky.

The Armour country plant at Springfield supplies milk to the Dean plant primarily when milk is needed for bottling. Usually, Dean bottles milk 4 days out of the week (Monday, Tuesday, Thursday and Friday). On Dean's nonbottling days, the Armour plant receives milk that is diverted from the Dean plant and manufactures such milk.

The Armour plant functions primarily as a balancing plant. On a "net shipments" basis, the Armour plant delivers during the fall months about 25 percent of the milk that it pools under the order. On days when the Armour plant's milk is needed by the Dean plant as much as 75 percent of the country plant's milk is delivered to the city plant.

The Louisville order like other Federal milk orders is designed primarily to assure an adequate supply of milk for fluid use. Consequently, standards must be developed to determine which milk is eligible to participate in the higher revenues generated by classified pricing. Under such pricing method, the highest price is paid for milk sold for Class I use. Minimum standards of performance are needed to distinguish between those milk supplies that are primarily serving the fluid needs of the regulated area and those supplies that do not serve the fluid market to a degree that warrants their sharing in the Class I utilization of the market.

Milk supplies that are casually or incidentally associated with the Class I needs should not be subject to complete regulation of the order or fully share in the Class I sales of plants serving the marketing area. Unless appropriate minimum standards are established, handlers have no assurance that milk will be made available to the fluid market when needed.

The proposed shipping percentages for pooling a country plant that were proposed by DI should be adopted based on this record. The requirement that a country plant deliver milk or skim milk in an amount not less than 50 percent during the months of August through November and January and February and 40 percent in other months is reasonable in view of the market's Class I utilization of producer receipts. These percentages are consistent with the adopted Class I disposition requirements of a city plant as discussed previously. Furthermore, the proposed shipping standards represent no change from the current shipping standards for a country plant except for the months of August and December. For the month of August, the standard adopted represents an increase of 10 percentage points while the standard for the month of December represents a decrease of 10 percentage points. The changes in standards for the 2 months are warranted in view of the increased demand for fluid milk products during August and the decreased demand for such items during December.

The primary problem with the current performance standards for pooling a country plant is that such standards provide no assurance that any of the country plant's receipts will be made available to city plants to meet their fluid milk requirements. The only way that city plants can be assured of receiving milk from a country plant and retaining such milk for fluid use is to establish a "net shipment" requirement.

Unless a "net shipment" requirement is adopted, a performance standard for a country plant is meaningless. As evidence of this, the Carnation plant that was pooled as a country plant for more than 2 years on the Louisville-Lexington-Evansville order delivered enough of its milk supply to a city plant to qualify as a pool plant. However, less than 1 percent of the milk pooled by Carnation was utilized by the city plant for fluid use while the remainder of such milk was returned to the country plant for use in its manufacturing operation. To forestall such pooling practices, a "net shipment" provision is needed and is adopted herein.

In determining whether a country plant has met the required shipments, milk or skim milk transferred or diverted from a city plant to a country plant (or a nonpool plant located at such site or a nonpool plant operated by the same company) that also receives milk or skim milk as a transfer or diversion from such city plant should be offset against the country plant's transfers or diversions to the city plant.

This decision provides that the offset shall apply to the extent that such milk or skim milk movements by the city plant exceed 5 percent of the milk or skim milk transferred or diverted from the country plant. This modification allows for the return to the country plant of a limited amount of milk that may be unfit to process into fluid milk products but could be used in manufacturing by a nonpool plant. The hearing record does not reveal the volume of milk that is unfit for use at city plants but indicates that occasionally there is a need for a load of milk to be sent to a manufacturing plant because of a quality problem.

The "call provision" proposed by Carnation should not be adopted. To merit pooling status, a country plant should be required to make some

meaningful contribution towards meeting the fluid milk demands of the city plants that they serve. A requirement that a country plant ship at least 40 percent of its receipts during the months of March-July and December and 50 percent of its receipts in other months is necessary to identify those plants that are sufficiently associated with the market to qualify as pool plants.

The "call provision" proposed by Carnation may have applicability in a market where the milk from country plants is needed on an intermittent basis to fulfill the fluid needs of city plants. In the Louisville-Lexington-Evansville market, however, two-thirds of the producer receipts are utilized for Class I purposes. In addition about 10 percent of the producer receipts is utilized for Class II purposes. In view of the market's fluid milk needs for Class I and Class II milk, it is likely that milk shipments will be needed on a month-to-month basis. Furthermore, from an operational standpoint, it would seem that a country plant operator would be in a better position to meet production goals knowing that the country plant must supply a specified percentage of its milk on a month-to-month basis instead of a percentage that could vary from 0 percent one month to 40 to 50 percent in the following month.

For the reasons previously set forth, the proposal to add a "call provision" to the Louisville-Lexington-Evansville order is hereby denied.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations herein after set forth supplement those that were made when the Louisville-Lexington-Evansville order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the tentative marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest;

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

Recommended Marketing Agreement and Order Amending the Order

The recommended marketing agreement is not included in this decision because the regulatory provisions thereof would be the same as those contained in the order, as hereby proposed to be amended. The following order amending the order, as amended regulating the handling of milk in the Louisville-Lexington-Evansville marketing area is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out.

List of Subjects in 7 CFR Part 1046

Milk marketing orders.

PART 1046—[AMENDED]

1. The authority citation for 7 CFR part 1046 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. In § 1046.7, paragraphs (a)(1), (b) and (c) are revised to read as follows:

§ 1046.7 Pool plant.

* * * * *

(a) A city plant which meets the following requirements:

(1) The total quantity of fluid products, except filled milk, disposed of in Class I is not less than 50 percent in each of the months of August through November and January and February, and is not less than 40 percent in each of the other months, of the total quantity of fluid milk products, except filled milk, physically received at such plant or diverted therefrom pursuant to § 1046.13; and

(2) * * *

(b) A country plant which delivers milk or skim milk to city plants during any of the months of August through November and January and February equal to not less than 50 percent, and during other months of the year equal to not less than 40 percent, of the milk from persons described in § 1046.12(a)(1) and from handlers described in § 1046.9(c) that is physically received at such country plant (except by diversion from other plants) or diverted therefrom pursuant § 1046.13. In determining whether a country plant has met the required shipments, milk or skim milk transferred or diverted from a city plant to a country plant (or a nonpool plant located at such site or a nonpool plant operated by the same company) that receives milk or skim milk as a transfer or diversion from such city plant shall be offset against the country plant's transfers or diversion to the city plant to the extent that such milk or skim milk movements by the city plant exceed 5 percent of the milk or skim milk transferred or diverted from the country plant. The operator of a country plant may include milk diverted pursuant to § 1046.13(b) from such plant to a city plant in meeting up to one-half of the shipping percentage(s) specified in this paragraph.

(c) In March through July a country plant that was a pool plant pursuant to paragraph (b) of this section each month during the preceding August through February, unless the operator of such plant notifies the market administrator in writing on or before February 15 of withdrawal of the plant from the pool for the months of March through July next following.

* * * * *

Signed at Washington, DC, on: October 1, 1990.

Daniel Haley,

Administrator.

[FR Doc. 90–23503 Filed 10–3–90; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910 and 1926

[Docket No. H-033-d]

RIN 1218-AB25

Occupational Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite

AGENCY: Occupational Safety and Health Administration, Department of Labor

ACTION: Proposed rule; re-opening of the rulemaking record and reconvening of public hearings.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is announcing the re-opening of the rulemaking record on non-asbestiform tremolite, anthophyllite and actinolite to allow for the submission of comments and analyses on a recent document submitted to the Agency by the American Thoracic Society (ATS). OSHA is also re-convening the informal public hearing for one day to provide an opportunity for testimony to be presented by the ATS.

DATES: Comments and analyses relevant to issues raised in the ATS final report must be postmarked on or before October 31, 1990. The one day hearing will begin at 9 a.m. on November 9, 1990.

ADDRESSES: Comments should be submitted in quadruplicate to the Docket Officer, Docket H-033-d, Occupational Safety and Health Administration, 200 Constitution Avenue NW., room N2625, Washington, DC 20210; telephone (202)-523-7894.

All written materials received will be available for inspection and copying in the Docket Office, Room N2625, 200 Constitution Avenue, NW., Washington, DC 20210, between the hours of 8:15 a.m. and 4:45 p.m.

The informal public hearing will begin at 9 a.m. on November 9, 1990 at the following location: Auditorium, U.S. Department of Labor, Frances Perkins Building, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: James F. Foster, Director of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, room N3649, 200 Constitution Avenue, NW., Washington, DC 20210.

SUPPLEMENTARY INFORMATION: On February 12, 1990 OSHA published a Notice of Proposed Rulemaking (NPRM) (55 FR 4938) to amend the asbestos standards (29 CFR 1910.1001; 1926.58) to remove non-asbestiform tremloite, anthophyllite and actinolite from their scope. Public hearings were held in Washington, DC, May 8-14, 1990. At the close of the hearings, the Administrative Law Judge set the following deadlines for participants to send material to OSHA: June 28, 1990 for the submission of additional information and July 23, 1990 for submission of comments, summation and briefs.

At the time of the hearings, the American Lung Association and its medical division, the American Thoracic Society (ATS), could not submit to the record its final report relating to the health effects of non-asbestiform tremolite, anthophyllite and actinolite. Earlier, the ATS had submitted a draft report to the record (Ex. 472) which discussed the relevant health issues and the ATS's opinion on the regulation of non-asbestiform tremolite, anthopyllite and actinolite. Extensive comment on the draft report had been submitted to the record before the hearing. ATS's final report was scheduled to undergo review for internal approval after the close of OSHA's public hearings. Because of the interest in the ATS report, the hearing participants and OSHA agreed that should the ATS submit a final document at a later date, OSHA would re-open the rulemaking record and reschedule testimony by the ATS.

OSHA has now received the final report from the ATS entitled, "The Health Effects of Tremolite." This document has been placed in the public record (Docket Number H-033-d, Exhibit # 525) and is available for inspection and copying.

Accordingly, at this time OSHA is announcing the re-opening of the rulemaking record to allow for public comments and analyses of the ATS report. OSHA is also re-convening the public hearings to allow ATS's testimony and questioning of ATS by hearing participants. This will provide an opportunity to present and discuss the issues raised in the ATS report.

Public Participation Notice of Hearing

Written Comments

All interested persons are invited to submit written comments on the issues raised in the ATS final report. Written comments must be postmarked on or before October 31, 1990 and submitted in quadruplicate to the Docket Office, Docket Number H-033-d, Room N2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. The telephone number of the Docket Office is (202)-523-7894, and its hours of operation are 8:15 a.m. to 4:45 p.m., Monday through Friday, except Federal Holidays. Comments limited to 10 pages in length may also be transmitted by facsimile to (202)-523-5046 or (for FTS) to 8-523-5046, provided the original and 4 copies of the comment are sent to the Docket Officer thereafter. Written submissions must clearly identify the issues which are addressed and the position taken on each issue.

All materials submitted will be available for inspection and copying at this address. All timely submissions will be part of the record of the proceeding.

Conduct and Nature of Hearings

Pursuant to section 6(b)(3) of the Act, the ATS will present oral testimony concerning its final report, "The Health Effects of Tremolite," at one day informal public hearing scheduled to begin at 9:00 a.m. on November 9, 1990, in the Auditorium, Frances Perkins Building, 200 Constitution Avenue, NW., Washington, DC 20210.

The hearing is open to the public, and all interested persons are welcome to attend. However, only persons who have filed proper Notices of Intention to Appear at the May 8-14, 1990 hearing, will be entitled to ask questions and otherwise participate fully in the proceeding. If time permits, other interested persons may be allowed to ask relevant questions of the ATS witness(es).

The hearings will commence at 9:00 a.m. on November 9, 1990. At that time, any procedural matters relating to the proceeding will be resolved.

The nature of an informal hearing is established in the legislative history of section 6 of the Act and is reflected by the OSHA hearing regulations (see 29 CFR 1911.15 (a)). Although the presiding offficer is an Administrative Law Judge and questioning by interested persons is allowed on crucial issues, the proceeding shall remain informal and legislative in nature. The Agency's intent is to provide an opportunity for effective oral presentations which can proceed expeditiously, in the absence of rigid procedures which impede or protract the rulemaking process.

Additionally, since the hearing is primarily for information gathering and clarification, it is an informal administrative proceeding, rather than an adjudicative one. The technical rules of evidence, for example, do not apply. The regulations that govern hearings and the pre-hearing guidelines issued for this hearing will ensure fairness and due process and also facilitate the development of a clear, accurate and complete record. Those rules and guidelines will be interpreted in a manner that furthers that development.

Thus, questions of relevance, procedure, and participation generally will be decided so as to favor development of the record.

The hearing will be conducted in accordance with 29 CFR part 1911. The hearing will be presided over by an Administrative Law Judge who makes no decision or recommendation on the merits of OSHA's proposal. The responsibility of the Administrative Law Judge is to ensure that the hearing proceeds at a reasonable pace and in an orderly manner. The Administrative Law Judge, therefore, will have all powers necessary and appropriate to conduct a full and fair informal hearing as provided in 29 CFR part 1911 including the powers:

(1) To regulate the course of the proceedings;

(2) To dispose of procedural requests, objections and comparable matters;

(3) To confine the presentation to the matters pertinent of the issues raised;

(4) To regulate the conduct of those present at the hearing by appropriate means;

(5) In the Judge's discretion, to question and permit the questioning of any witness and to limit the time for questioning; and

(6) In the Judge's discretion, to keep the record open for a reasonable, stated time to receive written information and additional data, views, and arguments from any persons who have participated in the oral proceedings.

Certification of Record and Final Determination After Hearing

Following the close of the post-hearing comment period, the presiding Administrative Law Judge will certify the record of the hearing to the Assistant Secretary of Labor for Occupational Safety and Health.

The proposed standard will be reviewed in light of all testimony and written submissions received as part of the record and a standard will be issued based on the entire record of the proceeding, including the written comments and data received from the public.

Authority: Sections 6(b), 8(c) and 8(g), Pub. L. 91-596, 84 stat, 1593, 1599, 1600; 29 U.S.C. 655, 657; 29 CFR part 1911: and Secretary of Labor's Order No. 1-90 (55 FR 9033).

Signed at Washington, DC on this 28th day of September 1990.

Gerard F. Scannell,

Assistant Secretary of Labor.

[FR Doc. 90-23417 Filed 10-3-90; 8:45 am]

BILLING CODE 4510-26-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 904

Arkansas Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; Public Comment Period and Opportunity for Public Hearing on Proposed Amendment.

SUMMARY: OSM is announcing the receipt of a proposed amendment to the Arkansas permanent regulatory program (hereinafter the "Arkansas program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of revisions to the Arkansas rules pertaining to the granting of exemptions for coal extraction incidental to the extraction of other minerals. The amendment is intended to revise the State program to be consistent with corresponding Federal standards.

This notice sets forth the times and locations that the Arkansas program and proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received by 4 p.m., c.d.t. November 5, 1990. If requested, a public hearing of the proposed amendment will be held on October 29, 1990. Requests to present oral testimony at the hearing must be received by 4 p.m., c.d.t. on October 19, 1990.

ADDRESSES: Written comments should be mailed or hand delivered to James H. Moncrief at the first address listed below.

Copies of the Arkansas program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Tulsa Field Office.

James H. Moncrief, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Kelly Drive, Suite 550, Tulsa, OK 74135, Telephone: (918) 581-6430

Arkansas Department of Pollution Control and Ecology, Mining Reclamation Division, 8001 National Division, 8001 National Drive, Little Rock, AR 72209, Telephone: (501) 562-7444

FOR FURTHER INFORMATION CONTACT: James H. Moncrief, Director, Tulsa Office, on telephone number (918) 581-6430.

SUPPLEMENTARY INFORMATION:

I. Background on the Arkansas Program

On November 21, 1980, the Secretary of the Interior conditionally approved the Arkansas program. General background information on the Arkansas program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Arkansas program, can be found in the November 21, 1980, Federal Register (45 FR 77003). Subsequent actions concerning the Arkansas program and program amendments can be found at 30 CFR 904.12, 904.15, and 904.16.

II. Proposed Amendment

By letter dated September 20, 1990 (administrative record No. AR-411), Arkansas submitted a proposed amendment to its program pursuant to SMCRA. Arkansas submitted the proposed amendment in response to a February 7, 1990, letter that OSM sent to Arkansas in accordance with 30 CFR 732.17(c). Arkansas proposes to amend its program by adding new rules concerning the exemption for coal extraction incidental to the extraction of other minerals. Specifically, Arkansas proposes to amend the Arkansas Surface Coal Mining and Reclamation Code sections: 702.1, scope; 702.5, definitions; 702.11, application requirements and procedures; 702.12, contents of application for exemption; 702.13, public availability of information; 702.14, requirements for exemption; 702.15, conditions of exemption and right of inspection and entry; 702.16, stockpiling of minerals; 702.17, revocation and enforcement; and 702.18, reporting requirements.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Arkansas program.

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include

explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Tulsa Field office will not necessarily be considered in the final rulemaking or included in the administrative record.

Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under "FOR FURTHER INFORMATION CONTACT" by 4 p.m., c.d.t. on October 19, 1990. The location and time of the hearing will be arranged with those persons requesting the hearing. If there is no request, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to testify have been heard. Persons in the audience who have been scheduled to testify, and who wish to do so, will be heard following those who have not been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contracting the person listed under "FOR FURTHER INFORMATION CONTACT." All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under "ADDRESSES." A written summary of each meeting will be made a part of the administrative record.

List of Subjects in 30 CFR Part 904

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 26, 1990.

Raymond L. Lowrie,

Assistant Director, Western Field Operations.

[FR Doc. 90-23521 Filed 10-3-90; 8:45 am]

BILLING CODE 4310-05-M

30 CFR Part 946

Virginia Regulatory Program; Subsidence

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Virginia permanent regulatory program (hereinafter, the Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Virginia proposes to amend its rules governing subsidence at sections VR 480-03-19.784.20(f)(2) and VR 480-03-19.817.121(c)(2). The proposed change will require an operator to repair or compensate the owner for subsidence-caused material damage to structures without regard to liability limitations imposed by State law.

This notice sets forth the times and locations that the Virginia program and proposed amendment to the program are available for public inspection, the comment period during which interested parties may submit written comments on the proposed amendment, and the procedures that will be followed regarding the public hearing, if one is required.

DATES: Written comments must be received on or before 4 p.m. on November 5, 1990. If requested, a public hearing on the proposed amendment will be held on October 29, 1990, requests to present testimony at the hearing must be received on or before 4:00 p.m. October 19, 1990.

ADDRESSES: Written comments and requests to testify at the hearing should be mailed or hand delivered to Mr. W. Russell Campbell, Director, Big Stone Gap Field Office at the first address listed below. If a hearing is requested, it will be held at the same address.

Copies of the Virginia program, proposed amendments and all written comments received in response to this notice will be available for review at the locations listed below during normal business hours Monday through Friday, excluding holidays. Each requestor may receive, free of charge, one single copy of the proposed amendment by contacting the OSM Big Stone Gap Field Office.

Office of Surface Mining Reclamation and Enforcement, Big Stone Gap, Virginia 24219, Telephone (703) 523-4303.

Virginia Division of Mined Land Reclamation, P.O. Drawer U, 622 Powell Avenue, Big Stone Gap, Virginia 24219, Telephone (703) 523-8100.

FOR FURTHER INFORMATION CONTACT: Mr. W. Russell Campbell, Director, Big Stone Gap Field Office, Telephone (703) 523-4303.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of the Interior approved the Virginia program on December 15, 1981. Information pertinent to the general background and revisions to the proposed Virginia program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval can be found in the December 15, 1981 Federal Register (46 FR 61085-61115). Subsequent actions concerning the conditions of approval and proposed amendments are identified at 30 CFR 946.12, 946.13, 946.15, and 946.16.

II. Discussion of Amendments

In *National Wildlife Federation* v. *Lujan* (Civil Actions 87-1051, 87-1814, and 88-2788, D.D.C. February 12, 1990), the United States District Court for the District of Columbia remanded the Federal rule on subsidence found at 30 CFR 817.12(c)(2) to the Secretary of the Interior with instructions to revise the rule by striking the reference to State law. Because the Virginia regulations at 480-03-19.784.20(f)(2) and 480-03.19.l817.121(c)(2) contain the same reference, the Secretary, in accordance with 30 CFR 732.17(f)(1), notified Virginia by letter dated June 22, 1990, (Administrative Record No. VA-751) that Virginia's regulations needed to be updated for consistency with the Federal regulations.

By letter dated September 12, 1990, (Administrative Record No. VA-761) Virginia submitted a proposed amendment to its program pursuant to SMCRA. Virginia proposes to revise its subsidence regulations at VR 480-03-19.784.20(f)(2) and VR 480-03-19.817.121(c)(2) by deleting all references to the liability limitations imposed by State law.

III. Public Comments Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether the amendments proposed by Virginia satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the Virginia program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include

explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Big Stone Gap Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "FOR FURTHER INFORMATION CONTACT" by close of business on October 19, 1990. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment, and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held.

Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the Big Stone Gap Field Office by contacting the person listed under FOR FURTHER INFORMATION CONTACT. All such meetings will be open to the public and, if possible, notice of meetings will be posted in advance at the locations listed under "ADDRESSES". A written summary of each public meeting will be made part of the Administrative Record.

List of Subjects in 30 CFR Part 946

Coal mining, Intergovernmental relations, Surface mining, and Underground mining.

Dated: September 26, 1990.

Carl C. Close,

Assistant Director, Eastern Field Operations.

[FR Doc. 90-23460 Filed 10-3-90; 8:45 am]
BILLING CODE 4310-05-M

National Park Service

36 CFR Part 7

RIN 1024-AB93

National Capital Region Parks; Prohibition of Storage of Property in Lafayette Park

AGENCY: National Park Service, Department of the Interior.

ACTION: Proposed rule and policy statement with request for comments.

SUMMARY: This proposed rule suggests amendments to the National Park Service regulations governing the storage of material in Lafayette Park. A proposed Administrative Policy Statement explains the administration of these regulations. These amendments and statement are intended to formalize restrictions regarding the storage of property in Lafayette Park.

DATES: Written comments must be received on or before December 3, 1990.

ADDRESSES: Written comments may be sent to: Robert Stanton, Regional Director, National Capital Region, National Park Service, 1100 Ohio Drive SW., Washington, DC 20242.

FOR FURTHER INFORMATION CONTACT: Sandra Alley, Associate Regional Director, Public Affairs, National Capital Region National Park Service, 1100 Ohio Drive SW., Washington, DC 20242, telephone: (202) 619-7223; Richard G. Robbins, Assistant Solicitor, National Capital Parks, Office of the Solicitor, Department of the Interior, Washington, DC 20240, telephone: (202) 208-4338.

SUPPLEMENTARY INFORMATION:

Background

1. History of Lafayette Park

Lafayette Park, originally known as the President's Park, is a rectangular area of approximately seven acres of land situated directly north of the White House on Pennsylvania Avenue. It is bounded on the east by Madison Place, north by H Street, and west by Jackson Place. The property was one of the first parcels of land donated by the original patentees to the District Commissioners for the formation of the Federal City (later Washington) in 1791. The site of what is now Lafayette Park (Park) was originally included in the area known as the President's House and the President's Park, according to the plans of Major Pierre L'Enfant. The entire area extended from 15th to 17th Streets NW., and from H Street on the north and to the Potomac River on the south. In the early 1800's President Thomas Jefferson authorized the Park's separation from the President's House, intending its use for local residents and visitors to Washington. The boundaries of the Park have not been altered up the present day.

In 1824, the grounds were improved and walks laid out in the square on the occasion of the visit of the Marquis de Lafayette, the French general and hero of the American Revolution.

The square was known as the "President's Part" until 1834, when the name "Lafayette Square" was adopted. Since 1933, when control of the National Capital Parks was returned to the Interior Department, the term "Lafayette Park" has been the preferred name and has been adhered to by the National Park Service.

2. Unique Features of the Park

Five memorial statutes, specifically authorized by legislation of Congress, honoring General Andrew Jackson and four foreign heroes of the American Revolution, grace Lafayette Park. The equestrian statue of General Andrew Jackson, the second one of its type to be cast in the United States, stands in the center of the Park. It was dedicated by Senator Stephen A. Douglas in 1853. The heroic bronze statue of General Lafayette, which stands at the southeast corner of the Park, was dedicated in 1891. The second Frenchman honored in the Park is the Comte de Rochambeau, who led the French Expeditionary Force to America during the Revolution. President Theodore Roosevelt dedicated the Rochambeau statue, which stands at the southwest corner of the Park, in 1902. The statue of General Thaddeus Kosciuszko, the Polish engineer who designed some of America's fortifications during the Revolutionary War, was dedicated in 1910 and stands at the northwest corner of the Park. The fifth statue, dedicated by President William Howard Taft in 1910, is that of Baron von Steuben, the Prussian disciplinarian and Inspector General of the Continental Army. If stands at the northwest corner of the Park.

In addition to honoring these five notable figures of America's past, Lafayette Park functions as a formal garden park of meticulous landscaping with flowers, trees, fountains, walk and benches. This aesthetic aspect of the Park has a rich history, going back over 130 years. In 1851, President Millard Fillmore endorsed the appointment of A.J. Downing, one of the most celebrated landscape architects of the day, to prepare plans for the landscaping of Lafayette Square and other park areas of the Nation's Capital. Downing is credited with the landscape

plan of Lafayette Park, which has generally been adhered to over the years with only slight revisions. The central theme then consisted of wide gravel paths leading to the statue of General Andrew Jackson as smaller meandering walks went past beds of roses and other flowers.

A second major change to take place in the landscaping of Lafayette Park was undertaken by the National Capital Parks in 1936 and 1937. The overall changes made during this period were the removal of the bronze urns to their present-day locations, the redesigning and widening of the walks, the relocation of trees and shrubbery, the closing of small gravel paths and the relocation of flower beds. The overall effect enhanced the beauty of the original Downing plan and made the Park more accessible to those people for whom the Park had originally been intended by President Jefferson—visitors and Washington residents.

Money was appropriate by Congress during the Presidency of John J. Kennedy for the purpose of installing decorative fountains in the Park. By 1969, a water sprinkler system for maintenance of the Park, as well as attractive interior brick walkways, was added to Lafayette Park. Improvements to the Park continue up to the present day. A new Park lighting system, historically accurate to the lamps used in the mid-1800's, was installed in 1985

Lafayette Park is appreciated by Washington, DC residents and visitors alike as a unique natural and historic site. Residents and workers come to Lafayette Park each day to play chess, eat a picnic lunch, stroll through the landscaped setting, or to sit quietly on a bench and read a book. Visitors come to the Park for many of the same reasons in addition to touring the gardens and the monuments. Lafayette park provides and unequaled setting for viewing the north side of the White House. During the summer months, thousands of persons visit the Park each day.

The National Park Service has long recognized the unique environment and sensitive nature of Lafayette Park as a major component in the historic setting of the White House and the national significance of the five major memorials which it contains. The Park Service has neither sponsored nor permitted special events in Lafayette Park for almost ten years. Unlike Farragut Square, where the Park Service permits noontime concerts, or the Ellipse, where the Park Services co-sponsors the National Christmas Pageant of Peace, Lafayette Park has been kept free of all Park Service-sponsored activities.

3. Current situation in Lafayette Park

Being located across from the White House, Lafayette Park is a popular location for park visitors including visitors conducting demonstrations of every sort. Under National Park Service regulations, groups numbering over twenty-five participants must apply for a permit to demonstrate.

The National Park Service, pursuant to 36 CFR 7.96(g)(5)(xii)(1985), had for several year imposed as a condition for a permit a rule which restricted the storage of property in Lafayette Park. On May 23, 1989, the National Park Service stopped imposing the rule when the United States Court of Appeals for the District of Columbia Circuit reversed the criminal conviction against a defendant charged with a violation of the rule restricting the storage of certain property in Lafayette Park. The conviction was reversed because the storage of property rule had not been published for notice and comments pursuant to the Administrative Procedure Act. *United States* v. *Picciotto,* 875 F.2d 345 (D.C. Air. 1989).

Aside from a prohibition against the storage of personal belongings in the context of illegal camping, the National Park Service has no specific regulation governing the placement or storage of property in Lafayette Park. The Park service has regulations governing the use of structures but this does not regulate the placement and storage of other property in Lafayette Park.

Over the years, Lafayette Park has become increasingly littered by assorted property placed or stored there by park visitors—demonstrators and nondemonstrators alike. On any one day, it is not uncommon to have amounts of tarps, bedding, blankets, pillows, sleeping bags, tools, food, luggage, clothes, household items and other similar types of property found within Lafayette Park. Some of such property has been found to remain in the Park for long periods of time. The National Park Service believes the accumulation of such property has had a negative impact on the enjoyment of Park by the visiting public.

A few demonstrators, who maintain 24-hour vigils in the park, store substantial amounts of their personal property within the Park. Such possessions have included bedding, blankets, sleeping bags, clothes, luggage and assorted household items. In addition, there have been numerous park visitors who are not demonstrators who also store personal property such as bedding, blankets, sleeping bags, clothes, luggage and assorted household items in the Park.

United States Park Police officers and National Park Service employees assigned to Lafayette Park during tourist seasons receive many complaints from visitors each year to the effect that the personal property placed and stored in Lafayette Park is unsightly. Complaints noted by the officers and employees include the fact that on occasion paint and lumber are used and stored in the park. National Park Service employees have noted that the use of paint in the Lafayette park has caused damage to park resources including sidewalks and walkways. The use and storage of bedding, blankets and sleeping bags on turf areas have caused damage to these areas. Further, old clothing and shoes have been found littered throughout Lafayette Park. Other complaints noted by the officers and employees include the fact that bedding, blankets and sleeping bags also litter the area.

In addition, over the past three years, the National Park Service has received at least five written requests for some action against the visual blight in Lafayette Park. Typical of these request is the following from a Virginia man:

> I believe that my pursuit of happiness includes my rights to peaceful enjoyment of our privileges and rights. In that respect, I am not happy when I am forced to pass by, and am forced to see the unsightly mess the people who camp and live in Lafayette park have created in the exercise of their rights of political dissent.
>
> We pay huge sums of money, in the form of taxes, to maintain the monuments and keep the National Parks a place in which *all* the people can enjoy and appreciate our heritage. The people who exercise their rights of political dissent, as those in Lafayette Park, deny to *all* the rest of us our rights of peaceful enjoyment.
>
> I am not advocating the removal of those people, nor their unsightly and distasteful expressions of political dissent. I do strongly disagree with their rights (it such rights exist) of cluttering so much of the park by the unsightly spreading of their bedding over the park. I mean they make it ugly!

The National Park Service believes the presence of these items in the Park has a negative impact on its historical and finely landscaped nature.

Regulatory Changes

1. Storage of Property

In order to meet substantial government interests in aesthetics and preservation of park resources, the National Park Service is proposing a rule that would limit the storage of property in Lafayette Park. As noted above, there are no current limitations specifically related to the storage of property in the Park. Further, enforcement of existing camping and

abandoned property regulations was not designed to and has not cured the problem of property storage.

The Park Service intends this proposed rule to place reasonable, content-neutral limitations on property storage in order to protect park resources and the unique aesthetic quality of Lafayette Park so that visitors may continue to enjoy the history and beauty of the park and demonstrators will continue to enjoy avenues to communication. This proposed rule is not intended to prohibit demonstrations in Lafayette Park, nor, is it intended to place additional limitations on signs or other similar communicative conduct above and beyond the limitations included in the existing regulations. This proposed rule is also not intended to interfere with demonstrators ability to distribute literature, march, speak, hold vigils, or otherwise exercise first amendment rights.

Specifically, the proposed rule would limit the storage of construction material, tools, lumber, paint, tarps, bedding, blankets, pillows, sleeping bags, food, clothing, literature, papers and all other similar types of personal property which might tend to harm park resources including aesthetic interests. Further, the proposed rule would allow quantities of literature, food and clothing that are actually in use or that are reasonably required during one 24-hour period, as long as such property occupies no more than three cubic feet of space and that the property is attended at all times while in the Park. The three cubic foot limitation was selected as that is the approximate size of a large duffle bag. The National Park Service believes a large duffle bag of gear is more than sufficient to sustain a demonstrator for a day. But, the National Park Service specifically invites public comments on whether the 24-hour criteria or the 3 cubic foot space limitation will fail to afford individuals ample alternatives for communication. Also, the proposed regulation requires park visitors to "attend" their property at all times. Attended is defined as being within three feet of the owner. It is the intention of the National Park Service to require persons to stay near their property while in the park and to take it with them when they leave.

2. Conclusion

The National Park Service believes that the proposed regulatory restriction, taken as a whole, accomplishes the purpose of maintaining Lafayette Park as a historic site and formal garden while still allowing ample avenues of communication for those who wish to demonstrate in the Park or elsewhere in the vicinity of the White House. The Park Service believes that it has a responsibility to maintain a high level of aesthetic quality in the parks under its administration, consistent with its duty to allow citizens an opportunity to express their First Amendment rights. Further, the National Park Service believes that there is clear legal authority for promulgation of this regulation as it is content-neutral, leaves open ample alternative avenues of communication, and is narrowly tailored to meet substantial government interests. The substantial government interest in aesthetics has been affirmed repeatedly by the courts. In fact, the Supreme Court has recognized aesthetics as a substantial government interest in at least two cases decided within recent years. *Metromedia, Inc.* v. *San Diego*, 453 U.S. 490 (1981), *City Council of Los Angeles* v. *Taxpayers for Vincent*, 466 U.S. 798 (1983).

Public Participation

The Department of the Interior wishes to ensure that the public will continue to have an opportunity to enjoy the unique history and beauty of Lafayette Park. At the same time, the Park Service recognizes that Lafayette Park provides demonstrators with an important location to exercise their first amendment rights. Because it is very difficult to regulate the use of the Park so that both of these goals can be met simultaneously, the Park Service especially invites comments from all segments of the public, demonstrators and other visitors alike, on all aspects of this proposed rule. Accordingly, interested persons may submit written comments, suggestions, or objections regarding the proposed rule to the address noted at the beginning of the rulemaking.

Drafting Information

The following persons participated in the writing of this rule: Richard G. Robbins and Randolph J. Myers, Office the Solicitor, U.S. Department of the Interior.

Compliance with Other Laws

The National Park Service has determined this document is not a major rule under E.O. 12291 and certifies this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

This rule does not constitute a major Federal action which significantly affects the quality of the human environment under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).

This rule is not a policy that has takings implications under E.O. 12630.

List of Subjects in 36 CFR Part 7

National parks, National Capital Region parks.

In consideration of the foregoing, it is proposed to amend 36 CFR part 7 as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

1. The authority citation for part 7 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 460(q), 462(k); Sec. 7.96 also issued under D.C. Code 8–137 (1981) and D.C. Code 40–721 (1981).

2. Section 7.96 is amended by adding a new paragraph (g)(5)(x)(C) to read as follows:

§ 7.96 National Capital Region Parks.

* * * * *

(g) * * *

(5) * * *

(x) * * *

(C) Storage of construction material, tools, lumber, paint, tarps, bedding, blankets, pillows, sleeping bags, food, clothing, literature, papers and all other similar types of personal property which might tend to harm park resources including aesthetic interests. *Provided, however,* that the presence of quantities of literature, food, clothing, and other personal property actually in use or that are reasonably required by a person during any one 24-hour period shall not constitute storage of property *provided* that no such property may occupy more than three (3) cubic feet of space and *provided further* that such property must be attended at all times while in the Park (the term "attended" is defined as an individual being within three (3) feet of his or her material).

* * * * *

Dated: September 21, 1990.

S. Scott Sewell,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 90–23315 Filed 10–3–90; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF VETERANS AFFAIRS

36 CFR Part 36

RIN 2900-AE19

Loan Guaranty; Servicing Procedures for Holders and Servicers of VA Guaranteed Loans

AGENCY: Department of Veterans Affairs.

ACTION: Proposed regulations.

SUMMARY: To establish a regulatory standard for servicing VA guaranteed loans, the Department of Veterans Affairs (VA) is proposing to amend its loan guaranty regulations (38 CFR part 36) by adding to the regulations the loan servicing procedures which will be required of holders and servicers of VA guaranteed loans.

DATES: Comments must be received on or before November 5, 1990. Comments will be available for public inspection until (Insert 40 days after publication in the **Federal Register**). The VA proposes to make these regulations effective 30 days after publication of the final regulations.

ADDRESSES: Interested persons are invited to submit written comments, suggestions or objections regarding this proposal to the Secretary of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420. All written comments will be available for public inspection in room 132, Veterans Service Unit, at the above address between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays) until November 13, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Leonard A. Levy, Assistant Director for Loan Management (261), Loan Guaranty Service, Veterans Benefits Administration, Department of Veterans Affairs, Washington, DC 20420, (202) 233-3668.

SUPPLEMENTARY INFORMATION: The guaranty or insurance of a loan by the Secretary is based, in part, on the understanding that adequate servicing will be performed by the loan holder. This servicing responsibility is recognized in the governing law (38 U.S.C. 1804(d)) which authorizes the Secretary to refuse, either temporarily or permanently, to guarantee or insure loans made by a lender or holder who has failed to maintain adequate loan accounting records or to demonstrate proper ability to service loans adequately. This law also provides that such a lender or holder may be barred from acquiring loans which the Secretary has guaranteed or insured.

The current regulations which were promulgated to implement this law provide procedures for suspending a lender or holder who has failed to fulfill this responsibility to service loans adequately. However, they do not prescribe in detail the manner in which loans should be serviced, nor do they define "adequate" servicing. Thus, VA personnel have no clear basis for imposing appropriate sanctions when they review a holder's servicing and find it inconsistent with practices generally employed by prudent lenders.

VA has always expected holders to service VA guaranteed loans in conformity with procedures customarily used by prudent lenders in servicing portfolios of similar-type conventional loans. The proposed regulations, which are based on servicing practices, will clarify what is expected of holders of VA guaranteed loans in the way of servicing. The proposal will also provide standards by which the adequacy of such servicing will be evaluated and provide VA with a clear basis for imposing sanctions when appropriate. In addition, failure to comply with the proposed regulations may subject a holder to a reduction in the amount of a claim payable under Loan Guaranty to the extent that such failure increases the liability of the Secretary. Generally, however, it is anticipated that failure to perform required property inspections and to take timely action to terminate loans secured by abandoned property would be the only situation in which failure to comply with the proposed regulations would demonstrably increase the Secretary's liability and subject a claim to adjustment under 38 CFR 36.4325(b)(11) or (c).

The proposal will also require the holder to provide notice of the default to the original veteran borrower and any other liable obligors within 30 days after a Notice of Intention to Foreclose is provided to the Secretary in cases in which the current owner of the property is not the original veteran borrower.

We understand that many holders do not have information on the original borrower and intervening transferees in their servicing records; however, this information should be available by the time a case is referred to an attorney to initiate foreclosure and holders will be expected to make reasonable efforts to locate these obligors and provide them with notice within the time frame allowed by the proposed regulation.

Under the current regulations holder is defined as "the lender or any subsequent assignee or transferee of the guaranteed obligation." The proposal will amend the definition of holder to include any authorized servicing agent of the lender or of the assignee or transferee if the loan has been assigned or transferred.

Paperwork Reduction Act

Sections 36.4278, 36.4317, and 36.4337 of these regulations contain information collection requirements which will result in a reporting burden. The reporting burden for these collections are as follows:

For §§ 36.4278 and 36.4337 the public reporting burden is estimated to average 5 minutes per response for a total of 415 hours.

For § 36.4317 the public reporting burden is estimated to average 15 minutes per response for a total of 10,625 hours.

The average estimated time per response includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

As requested by section 3504(h) of the Paperwork Reduction Act, the Department of Veterans Affairs is submitting to the Office of Management and Budget (OMB) a request that it approve this information collection requirement. Organizations and individuals desiring to submit comments for consideration by OMB on these proposed information collection requirements should address them to the office of Information and Regulatory Affairs, OMB, room 3002, New Executive Office Building, Washington, DC 20503; Attention: Joseph F. Lackey.

The Secretary hereby certifies that these proposed regulations will not, if promulgated, have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. Few VA loans are held and serviced by small entities. Furthermore, the servicing requirements in the regulations are based on practices usual and customary in the industry and are consistent with FHA practices. Meeting the requirements to provide a notice of default to original veteran obligors and a report of property abandonment to the Secretary will have only a slight impact on holders.

The Secretary has also determined that the proposed regulatory amendments are not a "major rule" within the meaning of Executive Order 12291, Federal Regulation. They will not have an annual effect on the economy of $100 million or more, and will not cause a major increase in costs or prices of consumers or individual industries, nor will they have other significant adverse effects on competition, employment,

investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance Program numbers are 64.114 and 64.119.

These amendments are proposed under the authority granted the Secretary by sections 210(c) and 1804(d) of title 38, United States Code.

List of Subjects in 38 CFR Part 36

Condominiums, Handicapped, Housing loan programs—housing and community development, Manufactured homes, Veterans.

Approved: August 28, 1990.

Edward J. Derwinski,

Secretary of Veterans Affairs.

38 CFR part 36, Loan Guaranty is proposed to be amended as follows:

PART 36—[AMENDED]

§ 36.4202 [Amended]

1. In § 36.4202(e) add the words "or the authorized servicing agent of the lender or of the assignee or transferred if the obligation has been assigned or transferred" and revise the citation to read "Authority: 1803(c)(1)".

§ 36.4216 [Amended]

2. In § 36.4216(a) in the first sentence after the word "adequately" add the words "as required under § 36.4278 and any other requirement of 38 U.S.C. and the regulations" and revise the citation to read "Authority 1804(d)".

§ 36.4217 [Amended]

3. In §36.4217 after the phrase "in writing" add the words "or such other communications medium as may be approved by an official designated in § 36.4221" and add the citation "(Authority: 1803(c)(1))".

4. Section 36.4278 is added to read as follows:

§ 36.4278 Servicing procedures for holders.

(a) The holder of a loan guaranteed or insured by the Secretary shall develop and maintain a loan servicing program which follows accepted industry standards for servicing of similar type conventional loans. The loan servicing program established pursuant to this section may employ different servicing approaches to fit individual borrower circumstances and avoid establishing a fixed routine. However, it must incorporate each of the provisions specified in paragraphs (b) through (l) of this section.

(b) Procedures for Providing Information. Loan holders shall establish procedures to provide loan information to borrowers, arrange for individual loan consultations upon request and maintain controls to assure prompt responses to inquiries. One or more of the following means of making information readily available to borrowers is required.

(1) An office staffed with trained servicing personnel with access to loan account information located within 200 miles of the property.

(2) Toll-free telephone service or acceptance of collect telephone calls at an office capable of providing needed information.

All borrowers must be informed of the system available for obtaining answers to loan inquiries, the office from which the needed information may be obtained, and reminded of the system at least annually.

(c) Statement for Income Tax Purposes. Within 60 days after the end of each calendar year, the holder shall furnish to the borrower a statement of the interest paid and, if applicable, a statement of the taxes disbursed from the escrow account during the preceding year. At the borrower's request, the holder shall furnish a statement of the escrow account sufficient to enable the borrower to reconcile the account.

(d) Change of Servicing. Whenever servicing of a loan guaranteed or insured by the Secretary is transferred from one holder or servicer, the holder effecting the transfer shall notify or arrange to notify the borrower. The notification shall provide the borrower with the name, address and telephone number of the new holder or servicer and include any special instructions for the handling of payments during the conversion period. Notification pursuant to this paragraph must be mailed to reach the borrower no later than 10 days prior to the due date of the first payment which the borrower is asked to remit to the holder or servicer.

(e) Escrow Accounts. A holder of a loan guaranteed or insured by the Secretary may collect periodic deposits from the borrower for taxes and/or insurance on the security and maintain a tax and insurance escrow account provided such a requirement is authorized under the terms of the security instruments. If the holder requires that an escrow account be maintained under the terms of the security instruments, the holder shall establish a system for periodic analysis of the account. This system must be established no later than the end of the second year of the loan and must provide for analysis of the account at least once a year thereafter. The following provisions shall apply to each tax and insurance escrow account which is maintained by the holder:

(1) After an analysis of the account pursuant to this paragraph, the escrow deposit requirements shall be adjusted as necessary to provide a sufficient accumulation of funds to make anticipated tax and insurance disbursements during the ensuing 12-month period.

(2) The borrower shall be given at least 10 days notice of an adjustment in escrow deposit requirements and an adequate explanation of the reasons for any change.

(3) Any surplus or shortage identified through an analysis of the escrow account shall be refunded to or collected from the borrower as provided for in the security instruments unless the holder determines repayment of a shortage pursuant to the terms of the security instruments could affect the borrower's ability to maintain the mortgage obligation and authorizes repayment under terms which are more beneficial to the borrower.

(4) The holder's estimate of escrow deposit requirements shall be based on the best information available as to probable disbursements which will be required to be made from the account in the coming year. In determining escrow deposit requirements, the holder may not require payments in excess of those authorized pursuant to the terms of the Real Estate Settlement and Procedures Act as interpreted by the Department of Housing and Urban Development.

(5) The holder shall not institute foreclosure or repossession without the prior approval of the Secretary when the only default of the borrower is caused by the inability to pay an escrow shortage in a lump sum.

(6) The holder is responsible for obtaining tax and insurance bills and paying them by the due date; any penalties incurred due to late payment may not be charged to the borrower unless such penalties are caused by the borrower's failure to cooperate with the holder in obtaining the bills.

(f) System for Servicing Delinquent Loans. Holders shall establish a system for servicing delinquent loans which ensures that prompt action is taken to collect amounts due from borrowers and minimize the number of loans in a default status. The holder's servicing system must include the following:

(1) An accounting system which promptly alerts servicing personnel when a loan becomes delinquent;

(2) A collection staff which is trained in techniques of loan servicing and counseling delinquent borrowers to advise borrowers how to cure delinquencies, protect their equity and credit rating and, if the default is insoluble, pursue alternatives to foreclosure;

(3) Procedural guidelines for individual analysis of each delinquency;

(4) Instructions and appropriate controls for sending delinquent notices, assessing late charges, handling partial payments, maintaining servicing histories and evaluating repayment proposals;

(5) Management review procedures for evaluating efforts made to collect the delinquency and the response from the borrower before a decision is made to initiate action to liquidate a loan;

(6) Procedures for reporting delinquencies of 90 days or more and loan terminations to major consumer credit bureaus as specified by the Secretary and for informing borrowers that such action will be taken;

(7) Controls to ensure that all notices required to be given to the Secretary on delinquent loans are provided timely and in such form as the Secretary shall require.

(g) Collection Actions. Holders should employ collection techniques which provide flexibility to adapt to the individual needs and circumstances of each borrower. A variety of collection techniques may be used based on the holder's determination of the most effective means of contact with borrowers during various stages of delinquency. However, the holder's collection procedures must at least include the following:

(1) A written delinquency notice to the borrower(s) requesting immediate payment if a loan installment has not been received within 17 days after the due date. This notice must be mailed no later than the 20th day of the delinquency and state the amount of the payment and of any late charges that are due.

(2) An effort, concurrent with the written delinquency notice, to establish contact with the borrower(s) by telephone. When talking with the borrower(s), the holder should attempt to determine why payment was not made and emphasize the importance of remitting loan installments as they come due.

(3) A letter to the borrower(s) if payment has not been received within 30 days after it is due and telephone contact could not be made. This letter should emphasize the seriousness of the delinquency and the importance of taking prompt action to resolve the default. It should also notify the borrower that the loan is in default, state the total amount due and advise and borrower how to contact the holder to make arrangements for curing the default.

(4) In the event the holder has not established contact with the borrower and has not determined the borrower's financial circumstances or established a reason for the default or obtained the borrower's agreement to a repayment plan, then a face-to-face interview with the borrower(s) or a reasonable effort to arrange such a meeting is required.

The holder must explain any failure to perform these collection actions when reporting loan defaults to the Secretary.

(h) Conducting Interviews with Delinquent Borrowers. When personal contact with the borrower(s) is established, the holder shall solicit sufficient information to properly evaluate the prospects for curing the default and whether the granting of forbearance or other relief assistance would be appropriate. At a minimum, the holder must make a reasonable effort to establish the following:

(1) The reason for the default and whether the reason is a temporary or permanent condition;

(2) The borrower's present income and employment.

(3) The current monthly expenses of the borrower including household and debt obligations.

(4) The borrower's current mailing address and telephone number(s).

(5) A realistic and mutually statisfactory arrangement for curing the default.

(i) Property Inspection. The holder shall make an inspection of the mortgaged property whenever it becomes aware that the physical condition of the security may be in jeopardy. Unless a repayment agreement is in effect, a property inspection shall also be made at the following times;

(1) Before the 60th day of delinquency or before initiating action to liquidate a loan, whichever is earlier;

(2) At least once each month after liquidation proceedings have been started unless servicing information shows the property remains owner-occupied.

Whenever a holder obtains information which indicates that a mortgaged property is abandoned, it shall make appropriate arrangements to protect the property from vandalism and the elements. Thereafter, the holder shall schedule inspections at least monthly to prevent unnecessary deterioration due to vandalism, or neglect. With respect to any loan more than 30 days delinquent, a property abandonment must be reported to the Secretary and appropriate action initiated under § 36.4280(e) within 15 days after the holder confirms the property is vacant.

(j) Collection Records. The holder shall maintain individual file records of collection action on delinquent loans and make such records available to the Secretary for inspection on request. Such collection records shall show:

(1) The dates and content of letters and notices which were mailed to the borrower(s).

(2) Dated summaries of each personal servicing contact and the result of same.

(3) The indicated reason(s) for default.

(4) The date and result of each property inspection.

(k) Reporting to the Secretary. A summary of collection efforts, the information obtained through such efforts and the holder's evaluation of the reason for the default and prospects for resolution of the default must be included in any notice provided to the Secretary pursuant to § 36.4280.

(l) Quality Control Procedures. No later than 180 days after the effective date of this regulation, each loan holder shall establish internal controls to periodically assess the quality of the servicing performed on loans guaranteed or insured by the Secretary and assure that all requirements of this section are being met. Those procedures must provide for a review of the holder's servicing activities at least annually and include an evaluation of delinquency and foreclosure rates on loans in its portfolio which are guaranteed or insured by the Secretary. As part of its evaluation of delinquency and foreclosure rates, the holder should:

(1) Collect and maintain appropriate data on delinquency and foreclosure rates to enable the holder to evaluate the effectiveness of its collection efforts.

(2) Determine how its VA delinquency and foreclosure rates compare with rates in various reports published by the industry, investors and others.

(3) Analyze significant variances between its foreclosure and delinquency rates and those found in available reports and publications and take appropriate corrective action.

Holders shall provide available statistical data on delinquency and foreclosure rates and their analysis of such data to the Secretary upon request.

(Authority: 1804(d))

5. In § 36.4280 paragraph (f) and authority citation is added to read as follows:

§ 36.4280 Reporting of defaults.

* * * * *

(f) Except for loans closed pursuant to a commitment issued after March 1, 1989, the notice required under subparagraph (e) of this paragraph shall also be provided to the original veteran-borrower and any other liable obligors by registered mail within 30 days after such notice is provided to the Secretary in all cases in which the current owner of the property is not the original veteran-borrower. A failure by the holder to comply with the provisions of this subparagraph may result in a partial or total loss of guaranty or insurance pursuant to VA Regulation 4287(b), but such failure shall not constitute a defense to any legal action to terminate the loan.

(Authority: 1803(c)(1))

§ 36.4301 [Amended]

6. In § 36.4301 in the definition for "holder" add the words "or the authorized servicing agent of the lender or of the assignee or transferee if the obligation has been assigned or transferred" and add the citation "(Authority: 1803(c)(1))".

§ 36.4317 [Amended]

7. In § 36.4317 after the word "appointment)", remove the comma and the word "and" and insert in its place a semicolon; and after the word "thereafter" remove the period and insert in its place a semicolon and the word "and", add paragraph (c) to read "(c) Except for loans closed pursuant to a commitment issued after March 1, 1988, the notice required under this paragraph shall also be provided to the original veteran-borrower and any other liable obligors by registered mail within 30 days after such notice is provided to the Secretary in all cases in which the current owner of the property is not the original veteran-borrower. A failure by the holder to comply with the provisions of this subparagraph may result in a partial or total loss of guaranty or insurance pursuant to VA Regulation 4325(b), but such failure shall not constitute a defense to any legal action to terminate the loan (Authority: 1803(c)(1))".

§ 36.4331 [Amended]

8. In § 36.4331(a) after the word "adequately" add the words "as required under § 36.4337 and any other requirements of 38 U.S.C. and the regulations" and revise the citation to read "Authority: 1804(d))".

§ 36.4332 [Amended]

9. In § 36.4332 after the word "writing" add the words "or such other communications medium as may be approved by an official designated in § 36.4342" and add the citation "(Authority: 1803(c)(1))".

10. Section § 36.4337 is added to read as follows:

§ 36.4337 Servicing procedures for holders.

(a) The holder of a loan guaranteed or insured by the Secretary shall develop and maintain a loan servicing program which follows accepted industry standards for servicing of similar type conventional loans. The loan servicing program established pursuant to this section may employ different servicing approaches to fit individual borrower circumstances and avoid establishing a fixed routine. However, it must incorporate each of the provisions specified in paragraphs (b) through (l) of this section.

(b) Procedures for Providing Information. Loan holders shall establish procedures to provide loan information to borrowers, arrange for individual loan consultations upon request and maintain controls to assure prompt responses to inquiries. One or more of the following means of making information readily available to borrowers is required:

(1) An office staffed with trained servicing personnel with access to loan account information located within 200 miles of the property.

(2) Toll-feee telephone service or acceptance of collect telephone calls at an office capable of providing needed information.

All borrowers must be informed of the system available for obtaining answers to loan inquiries, the office from which the needed information may be obtained, and reminded of the system at least annually.

(c) Statement for Income Tax Purposes. Within 60 days after the end of each calendar year, the holder shall furnish to the borrower a statement of the interest paid and, if applicable, a statement of the taxes disbursed from the escrow account during the preceding year. At the borrower's request, the holder shall furnish a statement of the escrow account sufficient to enable the borrower to reconcile the account.

(d) Change of Servicing. Whenever servicing of a loan guaranteed or insured by the Secretary is transferred from one holder or servicer to another, the holder effecting the transfer shall notify or arrange to notify the borrower. The notification shall provide the borrower with the name, address and telephone number of the new holder or servicer and include any special instructions for the handling of payments during the conversion period. Notification pursuant to this paragraph must be mailed to reach the borrower no later than 10 days prior to the due date of the first payment which the borrower is asked to remit to the holder or servicer.

(e) Escrow Accounts. A holder of a loan guaranteed or insured by the Secretary may collect periodic deposits from the borrower for taxes and/or insurance on the security and maintain a tax and insurance escrow account provided such a requirement is authorized under the terms of the security instruments. If the holder requires that an escrow account be maintained under the terms of the security instruments, the holder shall establish a system for periodic analysis of the account. This system must be established no later than the end of the second year of the loan and must provide for analysis of the account at least once a year thereafter. The following provisions shall apply to each tax and insurance escrow account which is maintained by the holder:

(1) After an analysis of the account pursuant to this paragraph, the escrow deposit requirements shall be adjusted as necessary to provide a sufficient accumulation of funds to make anticipated tax and insurance disbursements during the ensuing 12-month period.

(2) The borrower shall be given at least 10 days notice of an adjustment in escrow deposit requirements and an adequate explanation of the reasons for any change.

(3) Any surplus or shortage identified through an analysis of the escrow account shall be refunded to or collected from the borrower as provided for in the security instruments unless the holder determines repayment of a shortage pursuant to the terms of the security instruments could affect the borrower's ability to maintain the mortgage obligation and authorizes repayment under terms which are more beneficial to the borrower.

(4) The holder's estimate of escrow deposit requirements shall be based on the best information available as to probable disbursements which will be required to be made from the account in the coming year. In determining escrow deposit requirements, the holder may not require payments in excess of those authorized pursuant to the terms of the Real Estate Settlement and Procedures Act as interpreted by the Department of Housing and Urban Development.

(5) The holder shall not institute foreclosure without the prior approval of the Secretary when the only default of the borrower is caused by the inability

to pay an escrow shortage in a lump sum.

(6) The holder is responsible for obtaining tax and insurance bills and paying them by the due date; any penalties incurred due to late payment may not be charged to the borrower unless such penalties are caused by the borrower's failure to cooperate with the holder in obtaining the bills.

(f) System for Servicing Delinquent Loans Holders shall establish a system for servicing delinquent loans which ensures that prompt action is taken to collect amounts due from borrowers and minimize the number of loans in a default status. The holder's servicing system must include the following:

(1) An accounting system which promptly alerts servicing personnel when a loan becomes delinquent;

(2) A collection staff which is trained in techniques of loan servicing and counseling delinquent borrowers to advise borrowers how to cure delinquencies, protect their equity and credit rating and, if the default is insoluble, pursue alternatives to foreclosure;

(3) Procedural guidelines for individual analysis of each delinquency;

(4) Instructions and appropriate controls for sending delinquent notices, assessing late charges, handling partial payments, maintaining servicing histories and evaluating repayment proposals;

(5) Management review procedures for evaluating efforts made to collect the delinquency and the response from the borrower before a decision is made to initiate action to liquidate a loan;

(6) Procedures for reporting delinquencies of 90 days or more and loan terminations to major consumer credit bureaus as specified by the Secretary and for informing borrowers that such action will be taken;

(7) Controls to ensure that all notices required to be given to the Secretary on delinquent loans are provided timely and in such form as the Secretary shall require.

(8) Collection Actions. Holders should employ collection techniques which provide flexibility to adapt to the individual needs and circumstances of each borrower. A variety of collection techniques may be used based on the holder's determination of the most effective means of contact with borrowers during various stages of delinquency. However, the holder's collection procedures must at least include the following:

(1) A written delinquency notice to the borrower(s) requesting immediate payment if a loan installment has not been received within 17 days after the due date. This notice must be mailed no later than the 20th day of the delinquency and state the amount of the payment and of any late charges that are due.

(2) An effort, concurrent with the written delinquency notice, to establish contact with the borrower(s) by telephone. When talking with the borrower(s), the holder should attempt to determine why payment was not made and emphasize the importance of remitting loan installments as they come due.

(3) A letter to the borrower(s) if payment has not been received within 30 days after it is due and telephone contact could not be made. This letter should emphasize the seriousness of the delinquency and the importance of taking prompt action to resolve the default. It should also notify the borrower that the loan is in default, state the total amount due and advise the borrower how to contact the holder to make arrangements for curing the default.

(4) In the event the holder has not established contact with the borrower and has not determined the borrower's financial circumstances or established a reason for the default or obtained the borrower's agreement to a repayment plan, then a face-to-face interview with the borrower(s) or a reasonable effort to arrange such a meeting is required.

The holder must explain any failure to perform these collection actions when reporting loan defaults to the Secretary.

(h) Conducting Interviews with Delinquent Borrowers. When personal contact with the borrower(s) is established, the holder shall solicit sufficient information to properly evaluate the prospects for curing the default and whether the granting of forbearance or other relief assistance would be appropriate. At a minimum, the holder must make a reasonable effort to establish the following:

(1) The reason for the default and whether the reason is a temporary or permanent condition.

(2) The borrower's present income and employment.

(3) The current monthly expenses of the borrower including household and debt obligations.

(4) The borrower's current mailing address and telephone number(s).

(5) A realistic and mutually satisfactory arrangement for curing the default.

(i) Property Inspections. The holder shall make an inspection of the mortgaged property whenever it becomes aware that the physical condition of the security may be in jeopardy. Unless a repayment agreement is in effect, a property inspection shall also be made at the following times:

(1) Before the 60th day of delinquency or before initiating action to liquidate a loan, whichever is earlier;

(2) At least once each month after liquidation proceedings have been started unless servicing information shows the property remains owner-occupied.

When a holder obtains information which indicates that a mortgaged property is abandoned, it shall make appropriate arrangements to protect the property from vandalism and the elements. Thereafter, the holder shall schedule inspections at least monthly to prevent unnecessary deterioration due to vandalism, or neglect. With respect to any loan more than 30 days delinquent, a property abandonment must be reported to the Secretary and appropriate action initiated under § 36.4317(a) within 15 days after the holder confirms the property is vacant.

(j) Collection Records. The holder shall maintain individual file records of collection action on delinquent loans and make such records available to the Secretary for inspection on request. Such collection records shall show:

(1) The dates and content of letters and notices which were mailed to the borrower(s).

(2) Dated summaries of each personal servicing contact and the result of same.

(3) The indicated reason(s) for default.

(4) The date and result of each property inspection.

(k) Reporting to the Secretary. A summary of collection efforts, the information obtained through such efforts and the holder's evaluation of the reason for the default and prospects for resolution of the default must be included in any notice provided to the Secretary pursuant to § 36.4315 and § 36.4317.

(l) Quality Control Procedures. No later than 180 days after the effective date of this regulation, each loan holder shall establish internal controls to periodically assess the quality of the servicing performed on loans guaranteed or insured by the Secretary and assure that all requirements of this section are being met. Those procedures must provide for a review of the holder's servicing activities at least annually and include an evaluation of delinquency and foreclosure rates on loans in its portfolio which are guaranteed or insured by the Secretary. As part of its evaluation of delinquency and foreclosure rates, the holder should:

(1) Collect and maintain appropriate data on delinquency and foreclosure rates to enable the holder to evaluate effectiveness of its collection efforts.

(2) Determine how its VA delinquency and foreclosure rates compare with rates in reports published by the industry, investors and others.

(3) Analyze significant variances between its foreclosure and delinquency rates and those found in available reports and publications and take appropriate corrective action.

Holders shall provide available statistical data on delinquency and foreclosure rates and their analysis of such data to the Secretary upon request.

(Authority: 1804(d))

[FR Doc. 90-23296 Filed 10-3-90; 8:45 am]
BILLING CODE 8320-01-M

ENVIRONMENT PROTECTION AGENCY

40 CFR Part 52

Approval and Promulgation of Implementation Plans Federal Assistance Limitations; State of Illinois

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Notice of withdrawal of proposed rulemaking.

SUMMARY: USEPA is withdrawing its August 3, 1983, (48 FR 35315) and May 4, 1984, (49 FR 19039) proposed Federal assistance limitations and the August 3, 1983, proposed construction moratorium for Illinois' failure to submit and implement a vehicle inspection and maintenance (I/M) program as part of its 1982 State Implementation Plan revision. Elsewhere in today's **Federal Register**, USEPA is giving final approval to the Illinois carbon monoxide (CO) plan and attainment demonstration, and the transportation control measures (TCMs) and I/M program, which are part of the both the ozone and CO plans. USEPA's decision to give final approval to the Illinois I/M program eliminates the basis for the two previous sanction notices. USEPA, therefore, is withdrawing these notices.

USEPA, however, is retaining the Federal funding restrictions proposed in the November 2, 1989, **Federal Register** (54 FR 46271). USEPA proposed to limit certain Federal highway funding assistance for Cook, Lake, Kane, and DuPage Counties, Illinois, because the State has failed to adopt and submit to USEPA an I/M program commensurate with the severity of the ozone problem in the Chicago area. USEPA believes that enhancement of the existing I/M program remains necessary to help bring the area into attainment of the ozone National Ambient Air Quality Standard and that such an I/M program is a critical component of the "reasonable efforts" Illinois must make under section 176(a) of the Clean Air Act. For a complete discussion of these actions, see the supplementary information contained in USEPA's approval of the Illinois CO plan and attainment demonstration, and TCMs and I/M program, found elsewhere in today's **Federal Register**.

EFFECTIVE DATE: This withdrawal of proposed rulemaking becomes effective immediately.

ADDRESSES: Copies of all materials related to USEPA's actions are available at the following address for review: (It is recommended that you telephone Randolph O. Cano at (312) 886-6036 before visiting the Region V Office.) U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 609604.

FOR FURTHER INFORMATION CONTACT: Cheryl Newton, (312) 886-6081.

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Environmental protection, Hydrocarbons, Intergovernmental relations, Ozone.

Authority: 42 U.S.C. 7401 to 7642.

Dated: March 6, 1990.

Valdas V. Adamkus,

Regional Administrator.

Note: This document was received by the Office of the Federal Register September 28, 1990.

[FR Doc. 90-23392 Filed 10-3-90; 8:45 am]
BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

43 CFR Part 426

Acreage Limitation Rules and Regulations

AGENCY: Bureau of Reclamation, Interior.

ACTION: Proposed rule.

SUMMARY: The proposed rule revises 43 CFR 426.22, Decisions and Appeals, of the existing rules for administration of the Reclamation Reform Act of 1982. This section is being revised to permit recipients of adverse Bureau of Reclamation (Reclamation) decisions (appellants) to elevate their appeals to the Office of Hearings and Appeals (OHA).

The proposed appeal procedure is adopted pursuant to the Administrative Procedure Act (5 U.S.C. 551 et seq.), under which persons aggrieved by a determination of an agency official have an opportunity to appeal that determination to an impartial reviewer. We have now had several years of experience in administering and implementing the Reclamation Reform Act of 1982. That experience suggests that a further formalization of the appeal process, to allow appeals to OHA, would assure that appellants receive a broad-based and impartial review of their appeals.

Interest on any underpayments, as prescribed by section 224(i) of the Reclamation Reform Act of 1982 and 43 CFR 426.23, will continue to accrue during the time any appeal is pending.

The proposed rule adopts the procedure for filing an appeal with OHA as set forth in 43 CFR part 4, subpart G, and other applicable provisions of part 4.

DATES: Comments on this proposed rule must be submitted on or before November 5, 1990.

ADDRESSES: Written comments on the proposed rule are to be submitted to Terry Lynott, Director, Program Services Division; Bureau of Reclamation, Attention D-5100; PO Box 25007; Denver CO 80225.

FOR FURTHER INFORMATION CONTACT: Terry Lynott, telephone number (303) 236-3286.

SUPPLEMENTARY INFORMATION:

Statement of Effects

The Department of the Interior (DOI) has determined that the proposed rule does not constitute a major rule under Executive Order 12291 because the rule will not (1) have a measurable effect on the economy; (2) result in major costs to the public or government agencies; or (3) have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises. Therefore, a Regulatory Impact Analysis is not required and has not been prepared.

Paperwork Reduction Act

The proposed revised rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 et seq.

National Environmental Policy Act (NEPA) Compliance

The DOI has determined that this action meets the criteria for an action categorically excluded from the provisions of NEPA (40 CFR 1508.4) under Departmental Manual part 516 DM 6, appendix 9, section 9.4.A.1—"Changes in regulations or policy directives and legislative proposals where impacts are limited to economic and/or social effects."

Small Entity Flexibility Analysis

The proposed rule will not have a significant economic effect on a substantial number of small entities. The proposed rule merely modifies the existing procedures for appealing a determination made under the acreage limitation rules and regulations.

Public Comment on Proposed Rule

The policy of the Department of the Interior is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions or objections regarding the proposed rule to the location identified in the Addresses section of this preamble. Comments must be received on or before November 5, 1990.

Authorship

This proposed rule was prepared by the Reclamation Reform Act Task Force, which is chaired by Terry Lynott, Director, Program Services Division, Bureau of Reclamation, Denver Office.

List of Subjects in 43 CFR Part 426

Administrative practice and procedure, Irrigation, Reclamation, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, it is proposed to revise 43 CFR 426.22 to read as follows:

Dated: September 13, 1990.

Dennis B. Underwood,

Commissioner, Bureau of Reclamation.

PART 426—RULES AND REGULATIONS FOR PROJECTS GOVERNED BY FEDERAL RECLAMATION LAW

1. The authority citation for part 426 continues to read as follows:

Authority: Administrative Procedure Act, 60 Stat. 237, 5 U.S.C. 552; the Reclamation Reform Act of 1982, Pub. L. 97-293, title II, 96 Stat. 1263, as amended by the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100-203; an the Reclamation Act of 1902, as amended and supplemented 32 Stat. 388, (43 U.S.C. 371 et seq.).

2. Section 426.22 is revised to read as follows:

§ 426.22 Decisions and appeals.

(a) Unless otherwise provided by the Secretary, the Regional Director shall make any determination required under these rules and regulations. A party directly affected by such a determination may appeal in writing to the Commissioner of Reclamation within 30 days from the date of mailing (postmark) of the Regional Director's determination. The affected party shall have 60 days from the date of mailing (postmark) of the Regional Director's determination within which to submit a supporting brief or memorandum to the Commissioner. The Commissioner may extend the time for submitting a supporting brief for memorandum. The Regional Director's determination will be held in abeyance until the Commissioner has reviewed the matter and rendered a decision.

(b) The affected party may appeal the Commissioner's decision to the Secretary by writing to the Director, Office of Hearings and Appeals (OHA), within 30 days from the date of mailing (postmark) of the Commissioner's decision. The appeal provided in this paragraph (b) shall be governed by 43 CFR part 4, subpart G, and other provisions of 43 CFR part 4, where applicable.

(c) Interest on any underpayments will continue to accrue during the time any appeal is pending as provided in 43 CFR 426.23.

(d) Final decisions on appeals rendered by the Commissioner prior to the effective date of this section are hereby validated and may not be further appealed.

(e) Pertinent addresses are shown below:

Commissioner, Bureau of Reclamation, Department of the Interior, 18th and C Streets NW., Washington, DC 20240.

Director, Office of Hearings and Appeals, 4015 Wilson Boulevard, Room 1103 Ballston Tower No. 3, Arlington, VA 22203.

Regional Director, Pacific Northwest Region, Bureau of Reclamation, 550 West Fort Street, PO Box 043, Boise, ID 83724.

Regional Director, Mid-Pacific Region, Bureau of Reclamation, Federal Office Building, 2800 Cottage Way, Sacramento, CA 95825.

Regional Director, Lower Colorado Region, Bureau of Reclamation, Nevada Highway and Park Street, PO Box 427, Boulder City, NV 89005.

Regional Director, Upper Colorado Region, Bureau of Reclamation, 125 South State Street, PO Box 11568, Salt Lake City, UT 84147.

Regional Director, Great Plains Region, Bureau of Reclamation, 316 North 26th Street, PO Box 36900, Billings, MT 59107.

[FR Doc. 90-23488 Filed 10-3-90; 8:45 am]

BILLING CODE 4310-09-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 97

[PR Docket No. 90-356; DA-1302]

Denial of Request, Filed by The American Radio Relay League, Inc. (ARRL), for Extension of Time To File Comments in the Matter of Making the Amateur Service More Accessible to Persons With Handicaps

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; denial of extension of time.

SUMMARY: The ARRL states that its Executive Committee has not had an opportunity to meet and consider input from its volunteer examiner teams or its general membership. It also argues that there is no urgency to complete this matter because there is already a temporary waiver procedure in place for applicants with severe handicaps who cannot pass the higher speed telegraphy examinations for an amateur radio license. The Commission, however, pointed out that it is important for individuals with severe handicaps to know as soon as possible whether there will be greater accessibility to the higher grade amateur service licenses.

FOR FURTHER INFORMATION CONTACT: Maurice J. DePont, Federal Communications Commission, Washington, DC 20554, (202) 632-4964.

SUPPLEMENTARY INFORMATION:

Order

Adopted: September 27, 1990.
Released: September 28, 1990.

By the Acting Chief, Private Radio Bureau:

1. On August 9, 1990, the Commission released a *Notice of Proposed Rule Making* (*Notice*) in this proceeding,[1] proposing to make the amateur service more accessible to severely handicapped individuals, who, because of their handicaps, have extraordinary difficulty in passing Morse code

[1] 5 FCC Rcd 4889 (1990).

telegraphy examinations for amateur operator licenses. Specifically, the proposal would exempt a severely handicapped individual from the thirteen or twenty words per minute (wpm) telegraphy examination upon submission of a physician's certification that the individual, due to a severe handicap, cannot pass the higher speed telegraphy examination. The due dates for comments and reply comments are September 24, 1990, and October 9, 1990, respectively.

2. On September 21, 1990, The American Radio Relay league, Inc., (ARRL) requested an extension of time to and including November 15, 1990, within which comments may be filed in the proceeding. The ARRL states that it mailed a copy of the *Notice* to each of its volunteer examiner (VE) teams on August 28, 1990, but has not received their responses nor responses from its membership as a whole. The ARRL argues that its Executive Committee has not had an opportunity to meet and consider input from the VE teams or the general membership. The ARRL also argues that with a waiver procedure for the higher speed telegraphy examinations already in place, there is no urgency to complete action in this matter.

3. We have carefully considered ARRL's request for an extension of time, and its supporting arguments. We conclude that the requested extension should be denied. Consistent with the purpose of the Americans with Disabilities Act of 1990,[2] which provides, among other things, a comprehensive national mandate for the elimination of discrimination against individuals with disabilities, it is important for individuals with severe handicaps to know as soon as possible whether there will be greater accessibility to the higher grade amateur service licenses. This proceeding, therefore, should be concluded with all due dispatch.

4. In view of the foregoing, *it is ordered* That ARRL's request for an extension of time to and including November 15, 1990, to file comments in this proceeding *is denied.*

Federal Communications Commission.

Beverly G. Baker,

Acting Chief, Private Radio Bureau.

[FR Doc. 90-23522 Filed 10-3-90; 8:45 am]

BILLING CODE 6712-01-M

[2] *See* Pub. L. No. 101-336, 104 Stat. 327 (1990).

ENVIRONMENTAL PROTECTION AGENCY

48 CFR Parts 1515 and 1552

[FRL-3835-2]

Acquisition Regulation: Cost Proposals by Offerors

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes a rule on the submission of cost proposals by offerors. This rule is necessary to ensure that cost proposals are evaluated more thoroughly and on the same basis for all offerors. The intended effect of this action is to require offerors in their cost proposals to provide underlying assumptions in support of proposed category and individual labor rates, to propose the full amount of any travel or other direct cost specified in a solicitation, to propose their standard workyear for acquisitions that require fully dedicated staff, and to identify any management or management support costs to be charged as direct costs.

DATES: Written comments on this proposed rule must be received on or before November 5, 1990.

ADDRESSES: Comments should be addressed to Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Edward N. Chambers at 202-382-5028.

A. Background

Many offerors propose professional and technical labor as category rates, rather than specific individuals, to comply with professional and technical levels of labor specified in a solicitation. A solicitation will set forth specific educational and work experience requirements for each level, as well as the number of hours for each level. Offerors in responding to a particular professional or technical level will propose a company labor category rate, or will often combine two or more company labor categories to arrive at a combined labor category rate. Offerors are not presently required to provide descriptions and qualifications for company labor categories, nor to explain and to justify any weighting factors used to determine the relative usage of individuals within such a labor category or a combined category rate. Offerors who propose individual rates are similarly not required to justify any weighting factors used to determine the relative usage of proposal individuals. The proposed rule will require offerors to provide such information on any proposed category rates or on the use of any weighting factors.

EPA solicitations may specify amounts to be proposed for travel or other direct costs. Some offerors have assumed that the specified amounts include indirect cost and fee. The proposed rule will clarify that such specified amounts are exclusive of any indirect costs and fee.

On acquisitions requiring a contractor to provide fulltime dedicated staff for a twelve month period(s), EPA has required offerors to propose on a specified number of direct labor hours for each position. By EPA specifying direct labor hours on such acquisitions, contractors whose productive workyear is less than the specified hours may overstate costs, while contractors whose productive workyear is greater than the specified hours may understate costs. Further, contractors may propose costs under this requirement in a manner inconsistent with their accounting system and the manner in which they will incur costs. The proposed rule will require offerors to propose their company's workyear and identify how many hours in each workyear are direct (i.e. productive working hours), and how many are indirect (i.e. paid absences).

The EPA definition of direct labor in the clause at 48 CFR 1552.212-70 does not include management personnel. Direct labor is defined as including technical personnel, and not support personnel such as company management. However, many contractors whose standard accounting practice is to charge management labor as a direct cost have charged such costs as direct. A portion of such direct labor costs is therefore not available for technical effort. The proposed rule will require offerors to identify any management and management support costs to be charged direct.

B. Executive Order 12291

OMB Bulletin No. 85-7, dated December 14, 1984, established the requirements for the Office of Management and Budget (OMB) review of agency procurement regulations. This regulation does not fall within any of the categories cited in the Bulletin requiring OMB review.

C. Paperwork Reduction Act

The information collection requirements in this proposed rule hav been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* An Information Collection Request

document has been prepared by EPA (ICR No. *1038*) and a copy may be obtained from Wanda Haxton, Information Policy Branch; EPA; 401 M St., SW (PM-223); Washington, DC 20460 or by calling (202) 382-2706.

Public reporting burden for this collection of information is estimated to vary from 1 to 3 hours per response, with an average of 2 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments of the information collection requirements contained in this proposal.

D. Regulatory Flexibility Act

This rule is not expected to have a significant impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. The information requested for submission to the Government is readily available and will require a minimal effort for offerors to comply. The rule will require offerors to identify management and management support labor costs to be charged as direct costs, to provide underlying assumptions in support of proposed category and individual rates, and to propose their company's personyear rather than a specified number of hours for acquisitions that require fully dedicated staff over a specific time period. This is information which offerors normally develop in preparing cost proposals. The rule will merely require offerors to disclose this information for evaluation purposes.

The EPA certifies that this rule will not exert a significant impact on a substantial number of small entities. Therefore, no regulatory flexibility analysis has been prepared.

List of Subjects in 48 CFR Parts 1515 and 1552

Government procurement, Contracting by negotiation, Solicitation provisions and contract clauses.

For the reasons set out in the preamble, chapter 15 of title 48 Code of Federal Regulations is proposed to be amended as set forth below:

1. The authority citation for parts 1515 and 1552 continues to read as follows:

Authority: Sec. 205(c), 63 Stat 390, as amended, 40 U.S.C. 486(c).

2. Section 1515.407 is amended by revising paragraph (a)(2) to read as follows:

§ 1515.407 Solicitation provisions.

(a) * * *

(2) Section 1552.215-73, Instructions for the Preparation of Technical and Cost or Pricing Proposals (use Alternate I for cost-reimbursable, level of effort contracts; Alternate II for cost-reimbursable, level of effort contracts when the Government's requirement is for fully dedicated staff for a twelve month period(s) and performance is on a Government facility; or Alternate III for cost-reimbursable, level of effort contracts when the Government's requirement is for fully dedicated staff for a twelve month period(s) and performance is not on a Government facility).

* * * * *

3. In § 1552.215-73, in the provision, paragraph (b)(2)(i) is revised, paragraph (b)(4) is redesignated as paragraph (b)(4)(i), paragraph (b)(4)(ii) is added, and alternate clauses II and III are added to read as follows:

§ 1552.215-73 Instructions for the Preparation of Technical and Cost or Pricing Proposals

* * * * *

(b) * * *

(2) * * *

(i) Attach support schedules indicating types or categories of labor together with labor hours for each category, indicating rate of compensation. If individual labor rates are proposed, give employee names. Explain the basis of the proposed labor rates, including a complete explanation and justification for any judgmental factors used to determine weighting factors applied to either category rates or individual rates. Such explanation should refer to your technical approach as applicable. If internal category rates are the basis of the proposed rates, include a description for each labor category, which identifies the qualifications and experience requirements for each category, and a crosswalk reconciling company labor categories with the labor categories specified in this solicitation. Provide a matrix summarizing the effort proposed, including subcontractors, by professional and technical level.

* * * * *

(4)(i) * * *

(ii) If the solicitation specifies the amount of travel costs, this amount is exclusive of any applicable indirect costs and fee.

* * * * *

Alternate II (XXX-1990). If the Government's requirement is a fully dedicated staff person for a twelve month period(s) for each specified position and performance is on a Government facility, add the following paragraph (b)(2)(v) to the basic provision:

(v) The level of effort for each position is to be proposed in workyears. A workyear is considered to consist of 2080 hours inclusive of direct and indirect time (40 hours per week × 52 weeks per year = 2080 hours). Your proposal must identify proposed workyears and clearly identify how many hours in each workyear are direct (i.e., productive working hours) and how many are indirect (i.e. paid absences). If your company policy includes a different base work week, your total available hours would be different. For example, if your company's policy calls for a 37.5 hour work week, you would deduct your paid absences from 1950 hours (37.5 hr/wk × 52 wks/yr = 1950 hrs). It should also clearly identify the paid absences as to how many hours are for holiday and how many hours are for vacation and sick leave. The amount of indirect time (paid absences) identified in your proposal must be consistent with company policy and must allow for the ten Federal Government holidays.

Alternate III (XXX-1990). If the Government's requirement is a fully dedicated staff person for a twelve month period(s) for each specified position and performance is not on a Government facility, add the following paragraph (b)(2)(v) to the basic provision:

(v) The level of effort for each position is to be proposed in workyears. A workyear is considered to consist of 2080 hours inclusive of direct and indirect time (40 hours per week × 52 weeks per year = 2080 hours). Your proposal must identify proposed workyears and clearly identify how many hours in each workyear are direct (i.e. productive working hours) and how many are indirect (i.e. paid absences). If your company policy includes a different base work week, your total available hours would be different. For example, if your company's policy calls for a 37.5 hour work week, you would deduct your paid absences from 1950 hours (37.5 hr/wk × 52 wks/yr = 1950 hrs).

4. Section 1552.215–74 is amended by revising paragraph (a) of the provision to read as follows:

§ 1552.215–74 Cost Proposal Instructions.

* * * * *

(a) Labor.

(1) Technical Labor

Labor categories	Estimated hours	Rate/hour	Total
		$	$
		$	$
		$	$
Technical Labor Cost Subtotal			

(2) Management Labor

Labor categories	Estimated hours	Rate/hour	Total
		$	$
		$	$
		$	$
Management Labor Cost Subtotal			$
Total Labor Cost Subtotal			$

* * * * *

Dated: September 13, 1990.

John C. Chamberlin,

Director, Office of Administration.

[FR Doc. 90–22893 Filed 10–3–90; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 387

[FHWA Docket No. MC–122]

RIN 2125–AB65

Minimum Levels of Financial Responsibility for Motor Carriers; Self-Insurance

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Withdrawal of advance notice of proposed rulemaking (ANPRM).

SUMMARY: The FHWA is withdrawing an ANPRM published on June 18, 1986, 51 FR 22086, and closing docket No. MC–122. The rulemaking, issued in response to a petition submitted by May Trucking Company, sought comment from interested parties concerning self-insurance as a viable and effective mechanism for demonstrating financial responsibility as required by the Motor Carrier Act of 1980. The FHWA has received no convincing information that the financial interests of the motor carrier industry and the public would be better served if additional self-insurance authority was authorized.

FOR FURTHER INFORMATION CONTACT: Mr. Neill L. Thomas, Office of Motor Carrier Standards, (202) 366–2983, or Charles E. Medalen, Office of the Chief Counsel, (202) 366–1354, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: On June 18, 1986, the FHWA published an ANPRM in the **Federal Register** (51 FR 22086) seeking public comment concerning whether 49 CFR part 387 should be amended to allow motor carriers to qualify as self-insurers and thereby to satisfy the FHWAs financial responsibility requirements. In the same **Federal Register**, the FHWA adopted an interim rule to permit certain for-hire motor carriers of property to satisfy the financial responsibility requirements of the DOT (FHWA) by receiving approval from the Interstate Commerce Commission (ICC) to self-insure and maintaining a "satisfactory" safety rating assigned by the FHWA (51 FR 22080). In this regard, the FHWA took careful note of regulatory action by the ICC in response to a companion petition for authority to self-insure submitted by May Trucking Company. The ICC initially denied May's request, and the company filed a petition for reconsideration of that decision. May subsequently filed a separate petition with the FHWA. Upon reconsideration, the ICC granted May's application and adopted interim rules applicable to requests to self-insure. The ICC allowed carriers to self-insure for bodily injury and property damage liability, subject to certain conditions. Those conditions require motor carriers to do the following (See 51 FR 22081, June 18, 1986):

1. Submit carrier quarterly and annual financial statements to the Commission. The statements must include a certification by an appropriate carrier official verifying the accuracy of the information provided. Disclosure is also required of affiliated companies which provide support services for the operations of the motor carrier;

2. File quarterly claim reports detailing the number, dollar amount, nature of its claims experience, and quarterly reports detailing pending court cases relating to or arising from claims experience;

3. Immediately notify the ICC of any pending or contingent liability claim(s) which individually exceed $50,000 or collectively exceed $250,000;

4. Maintain an irrevocable $1 million line of credit, notify the ICC immediately upon any draw-down of the credit line, have unrestricted access to the entire credit line, and draw-down from the credit line only to satisfy bodily injury and property damage claims;

5. In the event of a draw down, provide the ICC with a plan detailing the motor carrier's proposed response to future liability claims;

6. Notify the ICC prior to the effective date of any change or cancellation of the credit line, or of renewal of the credit line;

7. Maintain a net worth of at least $2 million, and notify the ICC at any time that its net worth falls below that figure, at which time the motor carrier will have 30 days to correct the situation or face termination of the authority to self-insure; and

8. Acknowledge that the Commission retains the authority to terminate the motor carrier's self-insurance authorization at any time if it appears to the ICC that the motor carrier's financial

arrangements fail to provide satisfactory protection for the public.

The FHWA's interim rule provided relief only for motor carriers which have received approval from the ICC to self-insure, and which maintain "satisfactory" safety ratings under 49 CFR part 385. The FHWA recognized that there are motor carriers (primarily private motor carriers of hazardous materials) which are not eligible for ICC approval to self-insure but which are subject to the FHWA's financial responsibility requirements. The FHWA therefore published the June 18, 1986 ANPRM in an effort to obtain information concerning possible regulations that would allow all motor carriers subject to the FHWA's regulations to become self-insurers.

Fourteen commenters responded to the ANPRM. Eight of them supported some type of self-insurance; six of the eight were either for-hire motor carriers, or associations representing for-hire motor carriers, subject to the ICC's financial responsibility requirements. As such, all six have the prerogative of filing for self-insurance authority with the ICC. Another certificated for-hire carrier addressed only the dollar figure the ICC imposed for the establishment of an irrevocable line of credit and the requirement that a motor carrier must maintain a "satisfactory" safety rating to retain the right to self-insure. A labor union concluded that self-insurance could be a feasible option. However, the union also stated that "self-insurance will require the FHWA and possibly other branches of the U.S. Department of Transportation to make a 'substantial commitment of agency resources' for regulation. Unless and until the Department of Transportation is prepared to regulate a self-insurer, as a State regulates an insurance carrier, and expend the necessary resources, self-insurance should not be allowed. Only with the required regulation is self-insurance a viable option in the public interest." A national association of shippers supported self-insurance regulation as long as the government could ensure that the interests of shippers and the public are fully protected.

The Department of the Army opposed allowing motor carriers of hazardous substances to be self-insurers. The Army questioned the effectiveness of such a program screening out unqualified carriers. It was concerned that recovery of damages from self-insured motor carriers would be difficult, especially when catastrophic accidents occurred. It also believed there was reason to doubt the government could adequately regulate this complex area.

A private transportation consultant opposed self-insurance regulation because it would "* * * tread on extremely tenuous ground considering the fragile financial condition of the motor carrier industry and the fragile nature of the banking industry * * * in the United States. If the insurance industry collectively[,] with the vast resources that they have, cannot cope with the legal and economic conditions inherent in the motor carrier industry, how pray tell, can the individual motor carrier[,] standing alone, cope with the same economic and legal conditions[?]" Further, the commenter contended that the criteria proposed by May Trucking Company, similar to what the ICC requires, could only apply to Class I motor carriers (having operating revenues in excess of $5 million annually). Class II and III motor carriers would be precluded from participation because of the inability to meet the proposed financial constraints.

Only one commenter, an association representing 1,100 small business entities who transport hazardous materials as private motor carriers of property, spoke for the private carrier segment of the motor carrier industry. The association urged the FHWA to explore other ways to relieve the financial responsibility burden. It also urged congressional action to place a cap on monetary awards and attorney fees. The association further stated that it had solved its members' "availabilty" problem by forming a captive insurance company.

Two commenters addressed issues that were not pertinent to the rulemaking as published.

The ICC has allowed motor carriers subject to its jurisdiction to become self-insurers for the past four years. As of May 1990, the Commission has received 88 applications for self-insurance. Fifty-six applications have been granted. Nineteen application have been denied. Five have been dismissed or rejected. Seven have been withdrawn by the applicant and one is being processed. Even though 56 applications have been granted, the ICC's records indicate that only 20 motor carriers are actively using their self-insurance authority.

From the information submitted to the docket and information generally available to the public, the FHWA concludes that:

1. The insurance market place is working. Insurance, at the required levels, is available to the motor carrier industry. Even the motor carriers who do not qualify to purchase coverage in the voluntary market may obtain coverage through the involuntary (assigned risk) market.

2. Insurance premiums have levelled off and the vast majority of the motor carrier industry satisfies the FHWA's financial responsibility requirements with some type of purchased insurance.

3. Most for-hire motor carriers who may apply to the ICC for the right to self-insure have not done so. Only 20 of the 56 motor carriers (35%) granted such authority are actively using it.

4. There is a lack of interest in self-insurance by private motor carriers of hazardous materials. Only one association, representing a small segment of the private motor carriers industry, commented on the issue, and it concluded that a self-insurance regulation would not assist small business entities.

5. The establishment of a self-insurance program by the FHWA would require a substantial commitment of Agency resources that is unavailable at this time.

In view of the above, the FHWA is withdrawing the ANPRM on this subject and is closing Docket MC–122.

This action does not affect 49 CFR 387.7(d)(3)(1989). Despite the closure of this docket, an ICC decision authorizing a motor carrier to self-insure remains proof of compliance with the FHWA's financial responsibility requirements, provided the carrier maintain a satisfactory safety rating. There appears in the "Rules" section of today's Federal Register, a final rule that makes permanent the interim-final rule adopting subparagraph (d)(3) of 49 CFR 387.7 published on June 18, 1986 at 51 FR 22080.

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 387

Highways and roads, Financial responsibility, Insurance, Motor carriers.

(Catalog of Federal Domestic Assistance Program Number 20.217, motor carrier safety.)

Authority: 49 U.S.C. 10927 note; 49 CFR 1.48.

Issued on September 27, 1990.

T. D. Larson

Administrator.

[FR Doc. 23434 Filed 10–3–90; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

Feeding Wild Populations of Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule; notice of public hearings.

SUMMARY: On August 29, 1990 (55 FR 35328), NMFS issued a proposed rule that would amend the definition of "take" to include feeding marine mammals in the wild. The regulations would prohibit activities such as "dolphin feeding" cruises and feeding marine mammals from docks and piers. NMFS has scheduled four public hearings on this proposed rule and has extended the comment period.

DATES: Comments on the proposed rule will be accepted until November 8, 1990. Public hearings are scheduled as follows.

1. October 4, 1990, at 7 p.m., Panama City, FL;
2. October 16, 1990 at 7 p.m., Hilton Head Island, SC;
3. October 22, 1990 at 7 p.m., Corpus Christi, TX;
4. October 24, 1990, at 1 p.m., Silver Spring, MD.

ADDRESSES: Send written comments to Dr. Nancy Foster, Director, Office of Protected Resources, National Marine Fisheries Service, 1335 East West Highway, Silver Spring, MD 20910.

The hearings will be held at the following locations:

1. Panama City, FL—Room 115, Health Sciences Building, Gulf Coast Community College, Highway 98 West;
2. Hilton Head Island, SC—cafeteria, Hilton Head High School, 1983 School Road;
3. Corpus Christi, TX—Agriculture Research Extension Center, Texas A&M University, Highway 44 West (4 miles west of Corpus Christi Airport);
4. Silver Spring, MD—2nd floor conference room, Silver Spring Metro Center 2, 1325 East West Highway (next door to NMFS).

FOR FURTHER INFORMATION CONTACT: Jeffrey Brown (813) 893-3366 or Margaret Lorenz (301) 427-2322.

Dated: September 27, 1990.

Nancy Foster,

Director, Office of Protected Resources.

[FR Doc. 90-23440 Filed 10-3-90; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 55, No. 193
Thursday, October 4, 1990

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

September 28, 1990.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection: (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Public Law 96–511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250, (202) 447–2118.

Revision

• Food and Nutrition Service.

Employment and Training Program Report.

FNS–583.

Quarterly.

State or local governments; 1,700,212 responses; 339,564 hours; not applicable under 3504(h).

Ellen Henigan (703) 756–3762.

Extension

• Foreign Agricultural Service.

Declaration of Sale.

FAS 359.

On occasion.

Businesses or other for-profit; 504 responses; 126 hours; not applicable under 3504(h).

James (202) 447–5780.

• Agricultural Cooperative Service.

Agricultural Cooperative Service Questionnaire: Market Potential for New Cooperatives (Buyer Survey for New Cooperative Activity).

On occasion.

Businesses or other for-profit; Small businesses or organizations; 105 responses; 53 hours; not applicable under 3504(h).

Thomas H. Stafford (202) 653–6965.

Extension

• Food Safety and Inspection Service.

Regulations Governing Meat Inspection, part 309.16, Livestock Suspected of Having Biological Residues.

FSIS–6600–6.

Recordkeeping; On occasion.

Individuals or households; Farms; Businesses or other for-profit; Federal agencies or employees; Small businesses or organizations; 606,000 responses; 69,416 hours; not applicable under 3504(h).

Roy Purdie, Jr. (202) 447–5372.

Donald E. Hulcher,

Acting Departmental Clearance Officer.

[FR Doc. 90–23436 Filed 10–3–90; 8:45 am]

BILLING CODE 3410–01–M

Types and Quantities of Agricultural Commodities to be Made Available for Donation Overseas in Fiscal Year 1991

AGENCY: Office of the Secretary, USDA.

ACTION: Notice.

SUMMARY: This notice sets forth the determination of the Secretary of Agriculture of the types and quantities of agricultural commodities to be made available for donation overseas under section 416(b) of the Agricultural Act of 1949, as amended, during fiscal year 1991.

FOR FURTHER INFORMATION CONTACT: Mary Chambliss, Director, Program Analysis Division, Office of the General Sales Manager, FAS, USDA (202) 447–3573.

Determination

I have determined that 2,200,000 metric tons of grain and 109,700 metric tons of butter and butter oil shall be made available for donation overseas pursuant to section 416(b) during fiscal year 1991.

The kinds and quantities of commodities that shall be made available for donation are as follows:

	Commodity	Quantity (Metric Tons)
Grains and Oilseeds	Corn	1,500,000
	Sorghum	700,000
	Total	2,200,000
Dairy Products	Butter and Butter Oil	109,700
	Total	109,700

Done at Washington, DC this 1st day of October 1990.

Clayton Yeutter,

Secretary of Agriculture.

[FR Doc. 90–23501 Filed 10–3–90; 8:45 am]

BILLING CODE 3410–01–M

Office of the Secretary

Meat Import Limitations; Fourth Quarterly Estimate

Public Law 88–482, enacted August 22, 1964, as amended by Public Law 96–177, Public law 100–418, and 100–449 (hereinafter referred to as the "Act"), provides for limiting the quantity of fresh, chilled, or frozen meat of bovine, sheep except lamb, and goats; and processed meat of beef or veal (Harmonized Tariff Schedule of the United States subheadings 0201.10.00, 0201.20.20, 0201.20.40, 0201.20.60, 0201.30.20, 0201.30.40, 0201.30.60, 0202.10.00, 0202.20.20, 0202.20.40, 0202.20.60, 0202.30.20, 0202.30.40, 0202.30.60, 0204.21.00, 0204.22.40, 0204.23.40, 0204.41.00, 0204.42.40, 0204.43.40, and 0204.50.00), which may be imported, other than products of Canada, into the United States in any calendar year. Such limitations are to be imposed when the Secretary of Agriculture estimates that imports of articles, other than products of Canada, provided for in Harmonized Tariff Schedule of the United States subheadings 0201.10.00, 0201.20.40, 0201.20.60, 0201.30.40, 0201.30.60, 0202.10.00, 0202.20.40, 0202.20.60,

0202.30.40, 0202.30.60, 0204.21.00, 0204.22.40, 0204.23.40, 0204.41.00, 0204.42.40, 0204.43.40, and 0204.50.00) (hereinafter referred to as "meat articles"), in the absence of limitations under the Act during such calendar year, would equal or exceed 110 percent of the estimated aggregate quantity of meat articles prescribed for calendar year 1990 by subsection 2(c) as adjusted under subsection 2(d) of the Act.

As announced in the Notice published in the **Federal Register** on January 4, 1990 (55 FR 335), the estimated aggregate quantity of meat articles other than products of Canada prescribed by subsection 2(c) as adjusted by subsection 2(d) of the Act for calendar year 1990 is 1,242.0 million pounds.

In accordance with the requirements of the Act, I have determined that the fourth quarterly estimate of the aggregate quantity of meat articles other than products of Canada which would, in the absence of limitations under the Act, be imported during calendar year 1990 is 1,285 million pounds.

Done at Washington, DC this 28th day of September, 1990.

Clayton Yeutter,

Secretary of Agriculture.

[FR Doc. 90-23500 Filed 10-3-90; 8:45 am]

BILLING CODE 3410-10-M

Forest Service

News Used for Publication of Legal Notice of Appealable Decisions for Pacific Southwest Region, California

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: This notice lists the newspapers that will be used by all ranger districts, forests, and the Regional Office of the Pacific Southwest Region to publish legal notice of all decisions subject to appeal under 36 CFR 217. This action is necessary to implement the Secretary of Agriculture's interim rule amending the Forest Service administrative appeal procedures, which was signed on February 26, 1990 and was published in the **Federal Register** on March 6, 1990. The intended effect of this action is to inform interested members of the public which newspapers will be used to publish legal notices of decisions, thereby allowing them to receive constructive notice of a decision, to provide clear evidence of timely notice, and to achieve consistency in administering the appeals process.

DATES: Publication of legal notices in the listed newspapers will begin with decisions subject to appeal that are made on or after April 5, 1990. The list of newspapers will remain in effect until April 1991 when another notice will be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: KJ Silverman, Regional Appeals Coordinator, Pacific Southwest Region, 630 Sansome Street, San Francisco, CA 94111, phone: (415) 705-2553.

SUPPLEMENTARY INFORMATION: On February 26, 1990, the Secretary of Agriculture signed an interim rule amending the administrative appeal procedures 36 CFR 217 of the Forest Service to require publication of legal notice in a newspaper of general circulation of all decisions subject to appeal. This newspaper publication of notices of decisions is in addition to direct notice to those who have requested notice in writing and to those known to be interested and affected by a specific decision.

The legal notice is to identify: the decision by title and subject matter; the date of the decision; the name and title of the official making the decision; and how to obtain copies of the decision. In addition, the notice is to state the date the appeal period begins is the day following publication of the notice.

In addition to the principal newspaper listed for each unit, some forest supervisors and district rangers have listed newspapers providing additional notice of their decisions. The timeframe for appeal shall be based on the date of publication of the notice in the first (principal) newspaper listed for each unit.

The newspapers to be used are as follows:

Pacific Southwest Regional Office

Pacific Southwest Regional Forester decisions:
Sacramento Bee, Sacramento, California
Angeles Forest Supervisor decisions:
Los Angeles Times, Los Angeles, California
Arroyo-Seco District Ranger decisions:
Los Angeles Times, Los Angeles, California
Mount Baldy District Ranger decisions:
Los Angeles Times, Los Angeles, California
Saugus District Ranger decisions:
Los Angeles Times, Los Angeles, California
Tujunga District Ranger decisions:
Los Angeles Times, Los Angeles, California
Valyermo District Ranger decisions:
Los Angeles Times, Los Angeles, California

Cleveland National Forest

Cleveland Forest Supervisor decisions:
San Diego Union, San Diego, California
Descanso District Ranger decisions:
San Diego Union, San Diego, California
Palomar District Ranger decisions:
San Diego Union, San Diego, California
Newspaper providing additional notice of Palomar decisions:
Riverside Press-Enterprise, Riverside, California
Trabuco District Ranger decisions:
Orange County Register, Santa Ana, California
Newspaper providing additional notice of Trabuco decisions:
Riverside Press-Enterprise, Riverside, California

Eldorado National Forest

Eldorado Forest Supervisor decisions:
Mountain Democrat, Placerville, California
Amador District Ranger decisions:
Mountain Democrat, Placerville, California
Georgetown District Ranger decisions:
Mountain Democrat, Placerville, California
Pacific District Ranger decisions:
Mountain Democrat, Placerville, California
Placerville District Ranger decisions:
Mountain Democrat, Placerville, California

Inyo National Forest

Inyo Forest Supervisor decisions:
Inyo Register, Bishop, California
Mammoth District Ranger decisions:
Inyo Register, Bishop, California
Mono Lake District Ranger decisions:
Inyo Register, Bishop, California
Mount Whitney District Ranger decisions:
Inyo Register, Bishop, California
White Mountain District Ranger decisions:
Inyo Register, Bishop, California

Klamath National Forest

Klamath Forest Supervisor decisions:
Siskiyou Daily News, Yreka, California
Happy Camp District Ranger decisions:
Siskiyou Daily News, Yreka, California
Goosenest District Ranger decisions:
Siskiyou Daily News, Yreka, California
Oak Knoll District Ranger decisions:
Siskiyou Daily News, Yreka, California
Salmon River District Ranger decisions:
Siskiyou Daily News, Yreka,

California
Scott River District Ranger decisions:
Siskiyou Daily News, Yreka, California
Ukonom District Ranger decisions:
Siskiyou Daily News, Yreka, California

Lake Tahoe Basin

Lake Tahoe Basin Forest Supervisor decisions:
Tahoe Daily Tribune, So. Lake Tahoe, El Dorado County, California

Lassen National Forest

Lassen Forest Supervisor decisions:
Lassen County Times, Susanville, Lassen County, California
Almanor District Ranger decisions:
Chester Progressive, Plumas County, California
Eagle Lake District Ranger decisions:
Lassen County Times, Susanville, Lassen County, California
Hat Creek District Ranger decisions:
Intermountain News, Burney, Shasta County, California
Newspaper providing additional notice of Hat Creek decisions:
Mountain Echo, Fall River Mills, Shasta County, California

Los Padres National Forest

Los Padres Forest Supervisor decisions:
Santa Barbara News Press, Santa Barbara, California
Ojai District Ranger decisions:
Star Free Press, Ventura, California
Monterey District Ranger decisions:
Salinas Californian, Monterey, California
Mount Pinos District Ranger decisions:
The Bakersfield Californian, Kern, California
Santa Barbara District Ranger decisions:
Santa Barbara News Press, Santa Barbara, California
Santa Lucia District Ranger decisions:
Telegram Tribune, San Luis Obispo, California

Mendocino National Forest

Mendocino Forest Supervisor decisions:
Chico Enterprise-Record, Chico, California
Corning District Ranger decisions:
Chico Enterprise-Record, Chico, California
Covelo District Ranger decisions:
Ukiah Daily Journal, Ukiah, California
Stonyford District Ranger decisions:
Chico Enterprise-Record, Chico, California
Upper Lake District Ranger decisions:
Ukiah Daily Journal, Ukiah, California
Chico Tree Improvement Center Director decisions:
Chico Enterprise-Record, Chico, California

Modoc National Forest

Modoc Forest Supervisor decisions:
Modoc County Record, Alturas, Modoc County, California
Big Valley District Ranger decisions:
Modoc County Record, Alturas, Modoc County, California
Devil's Garden District Ranger decisions:
Modoc County Record, Alturas, Modoc County, California
Doublehead District Ranger decisions:
Modoc County Record, Alturas, Modoc County, California
Newspaper providing additional notice of Doublehead decisions:
Herald News, Klamath Falls, Oregon
Warner Mountain District Ranger decisions:
Modoc County Record, Alturas, Modoc County, California

Plumas National Forest

Plumas Forest Supervisor decisions:
Feather River Bulletin, Quincy, California
Beckwourth District Ranger decisions:
Portola Reporter, Portola, California
Greenville District Ranger decisions:
Indian Valley Record, Greenville, California
La Porte District Ranger decisions:
Oroville Mercury Register, Oroville, California
Milford District Ranger decisions:
Lassen County Times, Susanville, Lassen County, California
Oroville District Ranger decisions:
Oroville Mercury Register, Oroville, California
Quincy District Ranger decisions:
Feather River Bulletin, Quincy, California

San Bernardino National Forest

San Bernardino Forest Supervisor decisions:
San Bernardino Sun, San Bernardino, California
Arrowhead District Ranger decisions:
Mountain News, Blue Jay, California
Big Bear District Ranger decisions:
Big Bear Life and Grizzly, Big Bear, California
Cajon District Ranger decisions:
San Bernardino Sun, San Bernardino, California
San Gorgonio District Ranger decisions:
Yucaipa News Mirror, Yucaipa, California
San Jacino District Ranger decisions:
Idyllwild Town Crier, Idyllwild, California

Sequoia National Forest

Sequoia Forest Supervisor decisions:
Porterville Recorder, Porterville, California
Cannell Meadow District Ranger decisions:
Porterville Recorder, Porterville, California
Greenhorn District Ranger decisions:
Porterville Recorder, Porterville, California
Hot Springs District Ranger decisions:
Porterville Recorder, Porterville, California
Hume Lake District Ranger decisions:
Porterville Recorder, Porterville, California
Tule River Ranger District decisions:
Porterville Recorder, Porterville, California

Shasta-Trinity National Forest

Shasta-Trinity National Forest decisions:
Record Searchlight, Redding, Shasta County, California
Big Bar District Ranger decisions:
Record Searchlight, Redding, Shasta County, California
Hayfork District Ranger decisions:
Record Searchlight, Redding, Shasta County, California
McCloud District Ranger decisions:
Record Searchlight, Redding, Shasta County, California
Mount Shasta District Ranger decisions:
Record Searchlight, Redding, Shasta County, California
Shasta Lake District Ranger decisions:
Record Searchlight, Redding, Shasta County, California
Weaverville District Ranger decisions:
Record Searchlight, Redding, Shasta County, California
Yolla Bolla District Ranger decisions:
Record Searchlight, Redding, Shasta County, California

Sierra National Forest

Sierra Forest Supervisor decisions:
Frenso Bee, Frenso, California
Kings River District Ranger decisions:
Frenso Bee, Frenso, California
Pineridge District Ranger decisions:
Frenso Bee, Frenso, California
Mariposa District Ranger decisions:
Frenso Bee, Frenso, California
Miarets District Ranger decisions:
Frenso Bee, Frenso, California

Six Rivers National Forest

Six Rivers Forest Supervisor decisions:
Times Standard, Eureka, California
Casquest District Ranger decisions:
Del Norte Triplicate, Crescent City, California
Lower Trinity District Ranger decisions:
Klamath Kourier, Willow Creek, California
Mad River District Ranger decisions:
Times Standard, Eureka, California
Orleans District Ranger decisions:

Klamath Kourier, Willow Creek, California

Stanislaus National Forest

Stanislaus Forest Supervisor decisions:
The Union Democrat, Sonora, California
Calaveras District Ranger decisions:
The Union Democrat, Sonora, California
Groveland District Ranger decisions:
The Union Democrat, Sonora, California
Mi-Wok District Ranger decisions:
The Union Democrat, Sonora, California
Summit District Ranger decisions:
The Union Democrat, Sonora, California

Tahoe National Forest

Tahoe Forest Supervisor decisions:
Grass Valley Union, Grass Valley, California
Downieville District Ranger decisions:
Mountain Messenger, Downieville, California
Foresthill District Ranger decisions:
Auburn Journal, Auburn, California
Nevada City District Ranger decisions:
Grass Valley Union, Grass Valley, California
Sierraville District Ranger decisions:
Mountain Messenger, Downieville, California
Newspapers providing additional notice of Sierraville decisions:
Sierra Booster, Loyalton, California
Portola Recorder, Portola, California
Truckee District Ranger decisions:
Sierra Sun, Truckee, Nevada County, California
Newspaper providing additional notice of Truckee decisions:
Tahoe World, Tahoe City, Placer County, California

Dated: September 27, 1990.

Joyce T. Muraoka,

Deputy Regional Forester.

[FR Doc. 90-23506 Filed 10-3-90; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Joint Meeting of the Computer Peripherals, Components, and Related Test Equipment Technical Advisory Committee and the Computer Systems Technical Advisory Committee; Closed Meeting

Federal Register citation of previous announcement: pp. 38715-6 September 20, 1990.

Previously announced time of meeting: 9:30 a.m. October 16, 1990. Changes in meeting: 9:30 a.m., October 25, 1990, Herbert C. Hoover Building, Room 1629, 14th Street and Pennsylvania Avenue NW., Washington, DC. Fully closed.

Dated: October 1, 1990.

Betty Ferrell,

Director, Technical Advisory Committee Unit.

[FR Doc. 90-23492 Filed 10-3-90; 8:45 am]

BILLING CODE 3510-DT-M

Foreign-Trade Zones Board

[Order No. 490]

Temporary Extension of Manufacturing Authority for Berg Steel Pipe Corp. Plant Within Foreign-Trade Zone 65; Panama City, FL

Whereas, in 1981, the Foreign-Trade Zones Board (the Board) granted authority to the Panama City Port Authority (PCPA) to establish FTZ 65, Panama City, Florida, and authorized manufacturing under zone procedures for the large diameter steel pipe plant of Berg Steel Pipe Corporation (BSPC) within FTZ 65 for a period of 5 years (Board Order 171, 46 FR 8072);

Whereas, the Board subsequently extended authority for the BSPC operation until September 30, 1990 (Board Order 362, 52 FR 28713);

Whereas, on May 30, 1990, PCPA made application to the Board (FTZ Docket 21-90, 55 FR 23955) for an indefinite extension of authority;

Whereas, the review of the request for an indefinite extension will not be completed by the September 30, 1990, expiration date; and,

Whereas, the FTZ Staff, in a preliminary review, finds that temporary extension of authority until expiration of the extended President's Steel Program and Voluntary Restraint Agreements for Steel (March 31, 1992) would be in the public interest pending completion of the review;

Now, Therefore, the Board hereby orders:

That the manufacturing authority for the BSPC operation within FTZ 65 is extended to March 31, 1992, subject to all of the other conditions in Board Orders 171 and 362, pending completion of the review on PCPA's request for an indefinite time extension.

Signed at Washington, DC this 27th day of September, 1990.

Marjorie A. Chorlins,

Acting Assistant Secretary of Commerce for Import Administration Chairman, Committee of Alternates, Foreign-Trade Zones Board.

[FR Doc. 90-23491 Filed 10-3-90; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-533-501]

Final Results of Antidumping Duty Administrative Review; Certain Iron Construction Castings From India

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On August 7, 1989, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on certain iron construction castings from India. The review covers 11 manufacturers and/or exporters of this merchandise to the United States and the period October 28, 1985 through April 30, 1987.

We gave interested parties an opportunity to comment on our preliminary results. Based on our analysis of the comments received and the correction of certain clerical errors, we have changed the final results from those presented in our preliminary results of review.

EFFECTIVE DATE: October 4, 1990.

FOR FURTHER INFORMATION CONTACT: Susan Silver or Maureen Flannery, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377-5255.

SUPPLEMENTARY INFORMATION:

Background

On August 7, 1989, the Department of Commerce ("the Department") published in the **Federal Register** (54 FR 32366) the preliminary results of its administrative review of the antidumping duty order on certain iron construction castings from India (51 FR 17221, May 9, 1986). We have now completed that administrative review in accordance with section 751 of the Tariff Act of 1930, as amended ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of certain heavy and light iron construction castings. Heavy castings are limited to manhole covers, rings and frames, catch basin grates and frames, and clean out covers and frames used for drainage or access purposes for public utility, water and sanitary systems. During the review period, heavy castings were classifiable under items 657.0950 and 657.0990 of the Tariff Schedules of the United States

Annotated ("TSUSA"). This merchandise is currently classifiable under HTS items 7325.10.00.10.9 and 7325.10.00.50.0. Light castings are limited to valve boxes, service boxes and meter boxes which are placed below ground to encase water valves, gas valves, and other valves, or water and gas meters. During the review period, light castings were classifiable under TSUSA item 657.0990. This merchandise is currently classifiable under HTS item 7325.10.00.50.0. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers 11 manufacturers/exporters of certain Indian iron construction castings and the period October 28, 1985 through April 30, 1987. East Coast Co., Victory Iron Works, Paharimata Iron Works, Kamala Iron and Foundry, Shree Laxmi Metal and S.K. Iron Foundry and Engineering had no shipments during the period of review. Their deposit rate is the all other rate from the less-than-fair-value investigation.

Analysis of Comments Received

We invited interested parties to comment on the preliminary results. At the request of the petitioners, the Municipal Castings Fair Trade Council and its individually-named members, and respondents, we held a hearing on September 22, 1989. We also received comments from U.S. importers of iron metal castings from India.

Petitioners' Comments

Comment 1: Petitioners claim that the Department should have verified the questionnaire responses as required by law. Petitioners argue that section 776(b)(3)(A) of the Tariff Act requires verification in all reviews, if timely requested by an interested party, unless verification has been conducted in the two immediately preceding reviews. However, petitioners maintain that even this narrow exception will not apply if an interested party shows good cause for verification. Petitioners argue that verification is warranted in this case because none of the firms reviewed has ever been verified. Moreover, there are omissions in the responses that could be clarified through verification.

Department's Position: We disagree with petitioners' interpretation of the statute. Section 776(b)(3) of the Tariff Act provides that verification is required only if timely requested by an interested party *and* if no verification was conducted during the two immediately preceding reviews and determinations. Since this is the first administrative review in this proceeding, verification is not required.

Nevertheless, parties can claim an exception to this rule if they can show good cause. In this case, petitioners have not shown good cause for verification.

Neither of the reasons provided are sufficient to warrant verification. The Department carefully reviewed all responses and received satisfactory replies to all deficiency questionnaires. Petitioners have not demonstrated that any remaining errors or omissions had any impact on the Department's calculations or results. Regardless of this fact, however, the purpose of verification is to confirm the accuracy of the data submitted, not to supplement responses or to cure omissions. *See, Final Determination of Sales of Less Than Fair Values: Industrial Forklift Trucks from Japan,* (53 FR 12552 (4/15/88) *Final Results of Antidumping Duty Administrative Review; Sodium Nitrate from Chile,* 52 FR 25897 (7/9/87) and *Final Determination of Sales at Less Than Fair Value; Mirrors in Stock Sheet and Lehr End Sizes from the United Kingdom,* 51 FR 43411 (12/2/86). Nor does the fact that the reviewed companies were not previously verified provide good cause for verification in this review. *See, Cellular Mobile Telephones and Subassemblies from Japan; Final Results of Antidumping Duty Administrative Review,* 54 FR 48015 (11/28/89).

Comment 2: Petitioners claim than the Department should calculate constructed value using actual reported profits, rather than the eight percent statutory minimum, to the extent that respondents' questionnaire responses permitted calculation of actual profit. The Department should only use the statutory minimum of eight percent when actual profits amount to less than eight percent.

Petitioners further claim that, even where a respondent does not report profit on a market-specific basis, such as Super Castings which had no home market sales, the Department should calculate constructed value using the actual corporate profit rather than the statutory minimum of eight percent. For example, Super Castings' financial statements show that corporate profit exceeded the statutory minimum. Petitioners maintain that, in the *Final Determination of Sales at Less than Fair Value; Porcelain-on Steel Cooking Ware from Taiwan,* 51 FR 36425, October 10, 1986, in which respondents' production predominantly consisted of the products under investigation, the Department used the actual corporate profit or the eight percent statutory minimum, whichever was higher.

Department's Position: We examined the actual corporate profit of each producer from its financial statements. We calculated the profit by deducting the cost of production from the total sales revenue. We divided the resulting profit by the cost of production. We found that the profit for all companies did not exceed the statutory minimum. Accordingly, for purposes of constructed value, we used the statutory minimum of eight percent profit for all companies.

Comment 3: Petitioners maintain that the Department should not deduct the International Price Reimbursement Scheme ("IPRS") payments from raw material costs in constructed value and cost of production calculations. The IPRS reimburses castings producers for the price differential between domestic and international sources of pig iron. Petitioners maintain that there is no authority under the antidumping laws to treat these payments as reductions to raw material costs. Section 773(e) of the Tariff Act only allows for a reduction of the cost of materials for any internal tax that is remitted upon export. Since the IPRS payment is not a rebate of internal taxes upon export, section 773(e) does not apply and no adjustment can be made for the IPRS payment.

Even if the Department were to make an adjustment for IPRS payments, the Department should deduct these payments from the cost of production, not the cost of materials, in order to be consistent with Indian accounting records. Respondents' financial statements treat the IPRS payments as sales revenue, indicating that IPRS payments are related to the sale of the finished castings product, not the manufacture of that product. As a result, the IPRS payments reduce the producer's overall production costs, not the costs of manufacture. To reclassify the IPRS payments as a reduction to costs of manufacture ignores how these payments are treated for accounting purposes.

Department's Position: IPRS payments reduce the cost of pig iron, not the cost of production, making the cost of castings cheaper to produce because of lower prices for pig iron. In *Alhambra Foundry Co., Ltd.* v. *United States,* 701 F. Supp. 221 (CIT 1988), the Court upheld the Department's treatment of the IPRS as a reduction of raw material costs. The court agreed with the Department's reasoning that, just as raw material costs should be calculated net of duty drawback, the Department should reduce raw material costs by the amount of the IPRS payments, because

the IPRS payment effectively reduces the cost of such raw materials to castings producers. Therefore, the Department's adjustment of raw material costs for the IPRS payments was reasonable and consistent with the past practice and judicial precedent. We have received no new evidence from petitioners that suggests that a change in our practice is warranted.

Comment 4: Petitioners maintain that the Department can make a circumstance-of-sale adjustment for the IPRS payments in price-to-price comparisons only when the claim for the adjustment is sufficiently established and quantified. Petitioners argue that Uma and Commex failed to established entitlement to the claim as a circumstance-of-sale adjustment because they failed to show that IPRS payments affected the home market prices of castings.

Further, petitioners claim that respondents failed to adequately quantify the amount of IPRS payments because they did not link the payments to specific sales. The Department should not base IPRS circumstance-of-sale adjustments on amounts claimed on exports, but not actually received.

Department's Position: Castings producers receive export payments under the IPRS program, that are directly tied to, and contingent upon, the sale of castings to the United States. Further, the costs associated with the export of castings are effectively lowered by the IPRS payments. Accordingly, we are making circumstances-of-sale adjustments to foreign market value to account for differences in costs directly related to the sale of castings. In *Sawhill Tubular Div. Cyclops Corp. et al.* v. *United States,* 666 F. Supp. 1550, 11 C.I.T. 491 (1987), the Court of International Trade upheld the Department's adjustment to foreign market value to account for differences in costs, due to the IPRS rebate payments, which directly related to the sales under investigation.

We have no reason to believe that the IPRS amounts reported are inaccurate. The IPRS claims are based upon the exports made during the review period and, therefore, are linked to the sales made during the review period. Because the claimed amounts are sufficiently established and quantified, we see no reason to deny the claimed adjustments for IPRS payments.

Comment 5: Petitioners claim that Super Castings overstated the amount of IPRS payments that reduced its raw material costs because these claimed payments did not correspond to the amount of IPRS payments that Super Castings stated it applied for in its questionnaire response. In addition, these claimed IPRS payments do not correspond to the amounts reported in Super Castings' financial statements.

Department's Position: Super Castings correctly quantified the amount of IPRS payments that reduced its raw material costs. This amount, based on a metric ton of castings produced, will not necessarily correspond to the IPRS amounts applied for on exports because production periods differ from export periods. Further, because IPRS amounts appearing on the financial statements will reflect payments received during the fiscal year, not the amounts received on exports during the review period, the financial statements will not necessarily reflect respondents' production costs during the review period.

Comment 6: Petitioners argue that the Department erred by including an amount for the freight equalization fund ("FEF") tax in the calculation of taxes paid by Super Castings on heavy castings because Super Castings failed to claim that it actually paid this tax. Further, the Department's acceptance of Super Castings' central sales tax ("CST") claim, assuming a 15 percent dealer markup, was arbitrary and unreasonable because Super Castings has not demonstrated entitlement to this claim.

Department's Position: Respondents provided evidence during this review that the FEF tax is paid by all castings producers. Therefore, it was proper to deduct the FEF tax from raw material costs in the constructed value for Super Castings.

Regarding the 15 percent dealer markup on scrap used in calculating the CST tax, we accepted the markup in the fair value investigation, and petitioners have provided no evidence that the markup is inaccurate. Therefore, we have accepted the markup in this review.

Comment 7: Petitioners claim that, because Carnations failed to submit the requested tax information concerning the CCS program, the Department should not have made a reduction from raw material costs in the constructed value calculation for taxes rebated pursuant to the CCS program.

Department's Position: Carnations is an exporter of castings, not a manufacturer. Therefore, it does not have access to the tax information of its suppliers. Since these taxes are incurred in the production process and included in the price Carnations pays for finished castings, we used the average indirect taxes incurred in the Indian castings' industry to calculate the tax incidence paid by Carnations' suppliers as a reasonable estimate of the indirect taxes included in the finished castings price paid by Carnations.

Comment 8: Petitioners claim that the Department erred by calculating U.S. price for all respondents on a cents-per-pound basis. Petitioners claim that many respondents do not sell on a price-per-pound basis and should not have reported their sales as such. For example, Super Castings converted its prices from rupees per metric ton to cents per pound and rounded these figures, which indicates that castings were not sold on a cents-per-pound basis. Respondents have failed to submit price lists, purchase orders, and invoices to support their claims of sales made on a cents-per-pound basis. Petitioners further claim that respondents should have reported actual sales data and allowed the Department to convert. Rounding figures when converting into cents per pound distorts the U.S. price.

Department's Position: Respondents sell on a cents-per-pound basis. Therefore, there is no need to convert currencies for purposes of establishing U.S. price.

Comment 9: Petitioners claim that the Department erred in accepting Carnations' claim for a difference-in-merchandise adjustment for certain fittings on castings sales to third countries. Although Carnations provided material and labor costs of fittings, it did not explain how it arrived at these costs.

Carnations argues that the cost of extra fittings should not be included in constructed value because no extra fittings were used on sales of castings to the United States. Alternatively, Carnations argues, if the cost of extra fittings is included in constructed value, then it must be deducted from foreign market value as a circumstance-of-sale adjustment.

Department's Position: Petitioners have provided no evidence that Carnations' material and labor costs for fittings on castings sales to third countries are inaccurate. Accordingly, we are allowing the claim for a difference-in-merchandise adjustment for the cost of extra fittings on third-country sales.

Since we are including the cost of extra fittings in the cost of constructed value, we are making a difference-in-merchandise adjustment to third country price for the cost of extra fittings.

Respondents' Comments

Comment 10: Respondents request that the Department postpone the final results of administrative review until the Court of International Trade rules in *Kejriwal* v. *United States,* Court No. 89-

04–00172 and *Carnations, et al.* v. *United States*, Court No. 89–04–00216, both challenging the validity of the underlying antidumping duty order. Respondents claim that if the Department publishes its final results of review, the reviewed companies will be unfairly penalized because they will be subject to new deposit rates and will have to seek an injunction against liquidation of past entries. Additionally, respondents argue that a few months further delay until the court rules in the pending cases will not harm the U.S. industry or the Department's review process.

Department's Position: Section 751 of the Tariff Act contains no provision for suspending completion of administrative reviews pending the outcome of litigation challenging the fair value investigation. Delay of this administrative review would be contrary to the legislative intent for timely assessment and collection of antidumping duties. Timely completions of section 751 reviews would be a practical impossibility if the Department were to suspend completion every time there was litigation pending regarding a prior proceeding.

Comment 11: Kamala Iron Foundry claims that the Department should not have assigned it a margin of 8.43 percent based on best information available. Kamala claims that it did respond to the Department's questionnaire. Kamala reported that it had no exports during the review. Kamala requested exclusion from the review on the grounds that it is not an exporter of castings, but rather is only a supplier to one exporter, Kejriwal.

To support its claim for exclusion, Kamala maintains that the Department determined in the fair value investigation that Kamala was not an exporter of castings, but only a supplier to Kejriwal, and that Kamala did not know the ultimate destination of the goods. The Department also determined that Kejriwal should be excluded from the antidumping order based on no sales at less than fair value. Kamala argues that since Kejriwal was excluded from the order and Kamala was Kejriwal's supplier, Kamala should also have been excluded from the antidumping duty order and not assigned a dumping margin.

Department's Position: We did not investigate and exclude Kamala's sales to the United States during the less-than-fair-value investigation. We only determined that Kamala was a supplier to Kejriwal and that it did not know the ultimate destination of its castings exports. Thus, we had no basis to conclude that Kamala was selling at fair value and could qualify for exclusion from the antidumping duty order.

Furthermore, if Kamala wanted to be excluded from the order, it could have requested exclusion from the determination and order pursuant to § 353.45 of the Commerce regulations (1985). However, Kamala did not avail itself of this opportunity.

For any unreported shipments during the review period, we have assigned Kamala the all other rate from the period of investigation. If Kamala begins to export after the publication of our final results of review, it will be subject to the new shipper deposit rate, which is the highest rate for responding firms. Kamala may request a revocation, pursuant to section 353.25 of the Commerce regulations (1989), based upon three years of sales at not less than fair value.

Comment 12: East Coast Co., Paharimata Iron Works, Shree Laxmi Metal, and S. K. Iron Foundry and Engineering claim that, because they did not ship castings during the review period, they should receive the all other rate established in the fair value investigation.

Department's Position: We agree, and have revised the margins for these firms for the review period to reflect the all other rate established in the less-than-fair-value investigation. If East Coast Co., Paharimata Iron Works, Shree Laxmi, and S.K. Iron Foundry & Engineering begin to ship in the future, they will be subject to the new shipper rate.

Comment 13: Neenaa Foundry and Overseas Foundry claim that they should have been excluded from the antidumping duty order. During the less-than-fair-value investigation, Neenaa and Overseas were found to be related suppliers to Kajaria Castings, which was excluded from the antidumping duty order. Further, Neenaa and Overseas have provided additional evidence showing that they continue to be related to and controlled by Kajaria Castings, now called Select Steels, Ltd. Therefore, Neenaa and Overseas should have been excluded along with their related owner, Select Steels, Ltd.

Department's Position: During the fair value investigation, we determined that Neenaa and Overseas were related suppliers to Kajaria Castings and that they did not know the ultimate destination of the finished castings. However, we did not investigate Neenaa and Overseas as direct exporters of finished castings to the United States. Accordingly, they were not excluded from the antidumping order.

Because we received no requests for review, we did not initiate a review of these firms. During this review, Neenaa and Overseas requested that they should have been excluded from the order because they were related to Kajaria Castings (now Select Steels), which was excluded from the antidumping order. We determined that the exclusion in our less-than-fair-value determination only covers casting exported by Kajaria Castings. Consequently, Neenaa and Overseas were not covered by the exclusion for Kajaria Castings. Moreover, we cannot consider a request for exclusion from the antidumping duty order during an administrative review (*see*, our position to Comment 11). If Neenaa and Overseas export in the future, they will be subject to the new shipper rate.

Comment 14: Respondents believe that it is unreasonable for the Department to use Super Castings' response, as best information available, to calculate the fluctuations in cost for the other firms. Respondents claim that they were unable to report quarterly costs. Respondents further claim this methodology penalizes firms for not providing quarterly accounting data that they do not keep. Respondents argue that they should be treated the same as the companies in the less-than-fair-value investigation, who were not penalized by use of best information available when they reported only annual cost figures.

Moreover, making only upward adjustments for quarterly fluctuations, based on quarterly cost data submitted by Super Castings, is clearly unfair and distorts the actual annual costs of production as reported by these firms.

Finally, respondents claim that they were doubly penalized when the Department applied the percentage quarterly increases from Super Castings' response to cost of production figures as well as to constructed value figures for the other respondents.

Department's Position: We agree, and we have revised the cost figures to reflect the annual costs provided by respondents.

Comment 15: Respondents and importers claim that, pursuant to section 772(d)(1)(D) of the Tariff Act, the Department should add the amount of countervailing duty deposits to the U.S. price for heavy castings for both assessment and cash deposit purposes to avoid double-counting with respect to the export subsidy portion of countervailing duties. Alternatively, the Department should wait until the countervailing duty reviews are completed before publishing the final results of this review.

Indian castings exporters recognize that the Department has refused to make such an adjustment because countervailing duties have not yet been imposed. However, they claim that they should not be penalized by the Department's delay in completing countervailing duty reviews before an adjustment to U.S. price can be made in the antidumping duty reviews.

Department's Position: Section 772(d)(1)(D) of the Tariff Act requires the Department to make an upward adjustment to U.S. price when countervailing duties have been imposed on the subject merchandise. Since countervailing duties have not been imposed on entries of the merchandise covered by this review, we cannot make such an adjustment for assessment purposes under section 772(d)(1)(D) of the Tariff Act.

Moreover, for cash deposit purposes, because all the company rates are zero or *de minimis*, there is no need to adjust the antidumping duty cash deposit for export subsidies, not already accounted for in the constructed value calculation, in this case.

Comment 16: Respondents claim that the Department double-counted the interest expense by including bank interest charges in the SG&A portion of the constructed value calculation and adding U.S. credit to foreign market value as a circumstance-of-sale adjustment. The Department should deduct bank interest charges from SG&A before adding U.S. credit expense, or should leave bank interest charges in SG&A and make no circumstance-of-sale adjustment.

Department's Position: We have revised respondents' constructed value calculation by deducting the actual bank interest charges from SG&A expenses in constructed value and adding U.S. credit as a circumstance-of-sale adjustment, as required by § 353.56 of the Commerce regulations (1989).

Comment 17: Agarwalla claims that the Department double-counted packing and commission charges by including both expenses in SG&A and adding them to foreign market value as circumstance-of-sale adjustments. Agarwalla argues that the Department should either deduct packing and commission charges from SG&A and make circumstance-of-sale adjustments, or leave packaging and commission in SG&A and make no circumstance-of-sale adjustment to foreign market value.

Department's Position: We agree. We deducted packing and commission charges from SG&A. We added to FMV U.S. packing and imputed indirect selling expenses to offset commissions paid in the home market.

Comment 18: Respondents argue that the Department should not offset commissions paid on third-country sales by imputing indirect selling expenses on U.S. sales. Section 353.56(b) of the commerce regulations (1989) provides only a limited exception for indirect selling expenses that are actually incurred in one market to offset commissions paid in the other market. Respondents claim that, since Indian castings exporters sell through unrelated importers in the United States, castings exporters do not incur indirect selling expenses on U.S. sales. Consequently, the offset should not be permitted.

Department's Position: We requested information regarding indirect selling expenses incurred by respondents on U.S. sales. There was no indication from the questionnaire responses that castings exporters do not incur indirect selling expenses. Therefore, as best information available, we imputed the indirect selling expenses on U.S. sales to offset commissions paid on third-country sales.

Comment 19: Agarwalla claims that the Department, in calculating constructed value, incorrectly included the carriage inward expenses for third country sales through Bombay in SG&A, rather than the carriage inward expenses for sales through Calcutta. Agarwalla claims that, since U.S. sales were shipped through Calcutta rather than Bombay, the SG&A expenses should reflect the carriage inward charges for Calcutta, not Bombay.

Department's Position: We agree and have revised our constructed value calculation to reflect the carriage inward expenses incurred on sales made through Calcutta.

Comment 20: Agarwalla claims that the Department failed to account for corrections to errors in its responses for light castings which Agarwalla noted in a letter to the Department.

Department's Position: We revised Agarwalla's light castings data to account for Agarwalla's corrections to Agarwalla's U.S. sales data.

Comment 21: Uma and Commex claim that the Department incorrectly entered the home market sales data as cents per pound rather than rupees per pound as reported in the sales response.

petitioners claim that, even after entering sales data as rupees per pound, there will be insufficient home market sales above cost for these two companies. Consequently, the Department will have to use constructed value as a surrogate for home market prices.

Department's Position: We have revised our calculations by entering Uma's home market sales data (Commex has no home market sales) as rupees per pound. We compared Uma's home market sales to cost of production. For those below-cost sales we used constructed value as foreign market value.

Comment 22: Uma and Commex clams that the Department overstated its cost of production by not deducting the CCS, IPRS, and duty drawback export payments from the cost of raw materials.

Department's Position: We did not deduct the CCS, IPRS, and duty drawback from the cost of raw materials because we were comparing Uma's cost of production with its home market sales, for which the CCS, IPRS, and excise duty drawback were not received.

Comment 23: Uma and Commex claim that the Department did not deduct the full amount of IPRS payments from the cost of raw materials in constructed value and/or from foreign market value as a circumstance-of-sale adjustment. In addition, the Department understated the IPRS amounts deducted from foreign market value when converting IPRS payments from rupee figures per pound to dollar figures per pound. To convert IPRS payments to cents per pound, the Department must convert sales from rupees to dollars and multiply by 100 to arrive at a cents-per-pound figure.

Department's Position: We revised constructed value figures for Uma by deducting the full amount of IPRS payments from the cost of raw materials in constructed value. Since we made IPRS adjustments to home market prices in rupees per pound, there was not need to convert IPRS payments to cents per pound. The net home market price was then converted to cents per pound on the date of each U.S. sale.

Comment 24: Uma and Commex claim that home market packing was understated because the Department failed to multiply the packing amount by 100 when converting rupees to cents per pound.

Department's Position: We agree and have corrected the calculations.

Comment 25: Uma and Commex claim that the insurance deductions from U.S. price were overstated on certain sales because the Department failed to convert these amounts, reported as paise per pound, to rupees per pound before converting them to cents per pound.

Department's Position: We agree and have revised our calculations.

Final Results of the Review

As a result of the comments received, we have revised our preliminary results

and determine the margins for the period October 28, 1985 through April 30, 1987 to be:

Manufacturer/Exporter	Margin (percent)
R.B. Agarwalla & Co	0.21
Carnation Enterprises, Pvt. Ltd	0
Govind Steel Co	0
Super Castings (India)	0.42
Uma Iron & Steel Co./Commex Corporation	0.27
East Coast Co	[1] 0.28
Victory Iron Works	[1] 0.28
Paharimata Iron Works	[1] 0.28
Kamala Iron Foundry	[1] 0.28
Shree Laxmi Metal	[1] 0.28
S.K. Iron Foundry & Engineering	[1] 0.28

[1] No shipments during the period; margin from the less-than-fair-value investigation.

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service.

Because all of the companies have zero or *de minimis* dumping margins, the resulting cash deposit rates for all companies are less than 0.5 percent and, therefore, *de minimis*. Accordingly, pursuant to section 751(a)(1) of the Tariff Act, no cash deposit shall be required.

For any future entries of this merchandise from a new exporter not covered in this review, whose first shipments occurred after April 30, 1987, and who is unrelated to any previously reviewed firm, liquidation of entries will be suspended, and no cash deposit will be required. These deposit requirements and waivers are effective for all shipments of certain iron construction castings from India entered, or withdrawn from warehouses, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22 of the Department's regulations.

Dated: September 27, 1990.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 90-23489 Filed 10-3-90; 8:45 am]

BILLING CODE 3510-DS-M

Thiel College, et al.; Application; for Duty-Free Entry of Scientific Instruments: Correction

In FR Doc. 90-2385 at page 3438 in the Federal Register of February 1, 1990, the description of the instrument under docket number 90-001 appearing in the last paragraph of column 3, is corrected to read: *Instrument:* Photomultiplier Power Supply, Model PPS-60.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 90-23490 Filed 10-3-90; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Mid-Atlantic Fishery Management Council; Public Hearings

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of public hearings and request for comments.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council) will hold public hearings to allow for input on Amendment 1 to the Fishery Management Plan for the Summer Flounder Fishery (FMP).

DATES: Written comments will be accepted until October 22, 1990. See **"SUPPLEMENTARY INFORMATION"** for dates, times, and locations of the hearings.

ADDRESSES: Send comments to John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, room 2115 Federal Building, 300 South New Street, Dover, DE 19901.

FOR FURTHER INFORMATION CONTACT: John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, 302-674-2331.

SUPPLEMENTARY INFORMATION: The hearings are scheduled as follows:

1. October 10, 1990—Holiday Inn, 348 duPont Highway, Dover, Delaware.
2. October 10, 1990—Holiday Inn of Rockville Center, 173 Sunrise Highway, Rockville Center, Long Island, New York.
3. October 11, 1990—Wall Township Fire Hall, West Atlantic Avenue at Route 34, Wall, New Jersey.
4. October 11, 1990—Sheraton Salisbury Inn, 300 S. Salisbury Boulevard, Salisbury, Maryland.
5. October 11, 1990—Holiday Inn Riverhead, Exit 72, Long Island Expressway and Route 25, Riverhead, Long Island, New York.
6. October 15, 1990—Elizabethan Inn, Routes 64 and 264, Manteo, North Carolina.
7. October 15, 1990—Skipper Motor Inn, Route 6, Fairhaven, Massachusetts.
8. October 16, 1990—Joslyn Hall, Carteret Community College, 3505 Arendell, Morehead City, North Carolina.
9. October 16, 1990—Dutch Inn, Great Island Road, Galilee, Rhode Island.
10. October 17, 1990—Radisson, 700 Settlers Landing Road, Hampton, Virginia.
11. October 22, 1990—Cape May Extension Office, Dennisville Road, Cape May Court House, New Jersey.

All hearings will begin at 7 p.m., except the Riverhead and Rockville Center hearings, which will begin at 7:30 p.m., and will be tape recorded with the tapes filed as the official transcript of the hearing.

Dated: September 28, 1990.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90-23509 Filed 10-1-90; 12:48 pm]

BILLING CODE 3510-22-M

Mid-Atlantic Fishery Management Council; Public Hearing

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of a public hearing and request for comments.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council) will hold a public hearing to allow for input on Amendment 3 to the Fishery Management Plan for the Atlantic Mackerel, Squid, and Butterfish Fishery (FMP). The hearing will be tape recorded with the tapes filed as the official transcript of the hearing.

DATES: The public hearing will be held on October 21, 1990, at 7 p.m. Written comments will be accepted until October 29, 1990.

ADDRESSES: The hearing is scheduled to be held at the Holiday Inn, 45 Industrial Highway, Essington, Pennsylvania.

Send comments to John C. Bryson, Executive Director of the Mid-Atlantic Fishery Management Council, room 2115, Federal Building, 300 South New Street, Dover, DE 19901.

FOR FURTHER INFORMATION CONTACT: John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, 302-674-2331.

SUPPLEMENTARY INFORMATION:
Amendment 3 is intended to bring the FMP into compliance with the guidelines in 50 CFR 602 which require that every fishery management plan include a definition of overfishing. It is proposed that overfishing be defined as the catch of Atlantic mackerel, *Loligo pealei, Illex illecebrosus* or butterfish that exceeds the annual quota for each species. The provision of the FMP concerning setting annual quotas will prevent overfishing.

Dated: October 1, 1990.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90-23523 Filed 10-3-90; 8:45 am]

BILLING CODE 3510

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Republic of Korea

September 28, 1990.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: October 1, 1990.

FOR FURTHER INFORMATION CONTACT:
Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566-8041. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority. Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1654).

The current limits for certain categories are being adjusted, variously, for swing, carryforward and carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 54 FR 50797, published on December 11, 1989). Also see 55 FR 1706, published on January 18, 1990.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 28, 1990.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on January 11, 1990 by the Chairman, Committee for the Implementation of Textile Agreements. This directive concerns imports into the United States of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products produced or manufactured in the Republic of Korea and exported during the period which began on January 1, 1990 and extends through December 31, 1990.

Effective on October 1, 1990, you are directed to amend further the January 11, 1990 directive to adjust the limits for the following categories, in accordance with the provisions of the current bilateral agreement between the Governments of the United States and the Republic of Korea, as amended:

Category	Adjusted 12-Mo. Limit [1]
Sublevels in Group II:	
353/354/653/654	253,138 dozen.
442	49,806 dozen.
632	1,441,377 dozen pairs.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1989.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C 533(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 90-23494 Filed 10-3-90; 8:45 am]

BILLING CODE 3510-DR-M

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Turkey

September 28, 1990.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: October 5, 1990.

FOR FURTHER INFORMATION CONTACT:
Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343-6582. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority. Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854)

The current limits for certain categories are being adjusted, variously, for swing, special shift, carryforward used and carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 54 FR 50797, published on December 11, 1989). Also see 55 FR 26736, published on June 29, 1990.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 28, 1990.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on June 25, 1990 by the Chairman, Committee for the Implementation of Textile Agreements. This directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Turkey and exported during the period which began on July 1, 1990 and extends through June 30, 1991.

Effective on October 5, 1990, the directive of June 25, 1990 is being amended to adjust the limits for the following categories, as provided under the provisions of the current bilateral agreement between the Governments of the United States and the Republic of Turkey:

Category	Adjusted 12-month limit [1]
Fabric group	
219, 313, 314, 315, 317, 326, 617, 625, 626, 627, and 628, as a group.	90,871,650 square meters of which not more than 23,463,331 square meters shall be in 219. 28,677,404 square meters shall be in 313. 16,685,035 square meters shall be in 314. 22,420,516 square meters shall be in 315. 23,463,331 square meters shall be in 317. 2,607,037 square meters shall be in 326. 15,642,221 square meters shall be in 617. 2,607,037 square meters shall be in 625. 2,607,037 square meters shall be in 626. 2,607,037 square meters shall be in 627. 2,607,037 square meters shall be in 628.
Limits not in a group.	
200	791,671 kilograms.
237	165,732 dozen.
300/301	4,392,228 kilograms.
335	123,304 dozen.
336/636	308,947 dozen.
338/339	1,587,668 dozen of which not more than 1,036,173 dozen shall be in Categories 338-S/339-S.[2]
340/640	689,195 dozen of which not more than 275,679 dozen shall be in Categories 340-Y/640-Y.[3]
341	574,828 dozen of which not more than 212,656 dozen shall be in Category 341-Y.[4]
342/642	372,430 dozen
347/348	1,616,134 dozen of which not more than 796,492 dozen shall be in Categories 347-T/348-T.[5]
350	169,552 dozen.
351/651	300,563 dozen.
361	569,326 numbers.
369-S [6]	980,273 kilograms.
410/624	892,500 square meters of which not more than 577,500 square meters shall be in Category 410.
448	26,250 dozen.
604	1,121,934 kilograms.

[1] The limits have not been adjusted to account to any imports exported after June 30, 1990.

[2] Category 338-S: only HTS numbers 6103.22.0050, 6105.10.0010, 6105.10.0030, 6105.90.3010, 6109.10.0027, 6110.20.1025, 6110.20.2040, 6110.20.2065, 6110.90.0068, 6112.11.0030 and 6114.20.0005; Category 339-S: only HTS numbers 6104.22.0060, 6104.29.2046, 6106.10.0010, 6106.10.0030, 6106.90.2010, 6106.90.3010, 6109.10.0070, 6110.20.1030, 6110.20.2045, 6110.20.2075, 6110.90.0070, 6112.11.0040, 6114.20.0010 and 6117.90.0022.

[3] Category 340-Y: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2046, 6205.20.2050 and 6205.20.2060; Category 640-Y: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2050 and 6205.30.2060.

[4] Category 341-Y: only HTS numbers 6204.22.3060, 6206.30.3010 and 6206.30.3030.

[5] Category 347-T: only HTS numbers 6103.19.2015, 6103.19.4020, 6103.22.0030, 6103.42.1020, 6103.42.1040, 6103.49.3010, 6112.11.0050, 6113.00.0035, 6203.19.1020, 6203.19.4020, 6203.22.3020, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.49.3020, 6210.40.2030, 6211.20.1520, 6211.20.3010 and 6211.32.0040; Category 348-T: only HTS numbers 6104.12.0030, 6104.19.2030, 6104.22.0040, 6104.29.2034, 6104.62.2010, 6104.62.2025, 6104.69.3022, 6112.11.0060, 6113.00.0040, 6117.90.0042, 6204.12.0030, 6204.19.3030, 6204.22.3040, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.69.3010, 6204.69.9010, 6210.50.2030, 6211.20.1550, 6211.20.6010, 6211.42.0030 and 6217.90.0050.

[6] Category 369-S: only HTS number 6307.10.2005.

The Committee for Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1)).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 90-23495 Filed 10-3-90; 8:45 am]

BILLING CODE 3510-DR-M

Amendment of Coverage of Certain Part-Categories for Wool Textile Products Produced or Manufactured in Various Countries

September 28, 1990.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending coverage of certain part-categories.

EFFECTIVE DATE: October 1, 1990.

FOR FURTHER INFORMATION CONTACT: Lori E. Goldberg, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-3400.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

To facilitate the implementation of bilateral textile agreements and export visa arrangements based upon the Harmonized Tariff Schedule (HTS), for goods entered into the United States for consumption or withdrawn from warehouse for consumption on and after October 1, 1990, regardless of the date of export, coverage of part-Categories 410-A and 410-B is being amended on all visa and certification arrangements and all import controls with part-Categories 410-A and 410-B.

The attached directive contains HTS numbers which were published in Supplement II to the 1990 Harmonized Tariff Schedule.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 54 FR 50979, published on December 11, 1989).

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 28, 1990.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, all import control and counting directives issued to you by the chairman of CITA, which include part-Categories 410-A and 410-B, produced or manufactured in various countries and entered into the United States for consumption or withdrawn from warehouse for consumption on and after October 1, 1990, regardless of the date of export.

This directive amends, but does not cancel, the directive of December 22, 1988, as amended, which amended visa requirements for all countries for which visa arrangements are in place with the United States Government.

Effective on October 1, 1990, you are directed to make the changes shown below for all countries with part-Categories 410-A and 410-B. These changes are effective for goods entered into the United States for consumption or withdrawn from warehouse for consumption on and after October 1, 1990, regardless of the date of export.

Category	Obsolete No.	New No.
410-A	5111.11.1000	5111.11.3000
	5111.11.6030	5111.11.7030
	5111.11.6060	5111.11.7060
	5111.20.6000	5111.20.6001
	5111.30.6000	5111.30.6001
	5111.90.6000	5111.90.7000
410-B	5112.11.0030	5112.11.2030
	5112.11.0060	5112.11.2060
	5112.19.6010	5112.19.6011
	5112.19.6020	5112.19.6021
	5112.19.6040	5112.19.6041
	5112.19.6050	5112.19.6051
	5112.20.0000	5112.20.3000
	5112.30.0000	5112.30.3000
	5112.90.6010	5112.90.6011
	5112.90.6090	5112.90.6091

The Commiteee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 90-23493 Filed 10-3-90; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Office of the Secretary

DOD Advisory Group on Electron Devices; Advisory Committee Meeting

SUMMARY: Working Group B (Microelectronics) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Monday, 29 October 1990.

ADDRESSES: The meeting will be held at Palisades Institute for Research Services, Inc., 2940 Presidential Drive, Suite 210, Fairborn, Ohio.

FOR FURTHER INFORMATION CONTACT: Warner Kramer, AGED Secretariat, 2011 Crystal Drive, Suite 307, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group B meeting will be limited to review of research and development programs which the military propose to initiate with industry, universities, or in their laboratories. The Microelectronics area includes such program as integrated circuits, charge coupled devices and memories. The review will include classified program details throughout.

In accordance with section 10(d) of Public Law 92-463, as amended (5 U.S.C. App. II 10(d) (1982)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly, this meeting will be closed to the public.

Dated: September 28, 1990.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 90-23418 Filed 10-3-90; 8:45 am]

BILLING CODE 3810-01-M

Strategic Defense Initiative Advisory Committee

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Strategic Defense Initiative (SDI) Advisory Committee will meet in closed session in Washington, DC., on October 15, 1990.

The mission of the SDI Advisory Committee is to advise the Secretary of Defense and the Director, Strategic Defense Initiative Organization on scientific and technical matters as they affect the perceived needs of the Department of Defense. At the meeting on October 15, 1990, the committee will discuss status of the SDI Mid and Terminal Tier Review.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law No. 92-463, as amended (5 U.S.C. App II, (1982)), it has been determined that this SDI Advisory Committee meeting concerns matters listed in 5 U.S.C. 552(c)(1) (1982), and that accordingly this meeting will be closed to the public.

Dated: September 28, 1990.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 90-23419 Filed 10-3-90; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP90-2097-000, et al.]

Northern Natural Gas Co. et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Northern Natural Gas Company

[Docket No. CP90-2097-000]

September 26, 1990.

Take notice that on August 29, 1990, Northern Natural Gas Company, Division of Enron Corp. (Northern), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP90-2097-000 an application pursuant to section 7(c) of the Natural Gas Act for issuance of a certificate of public convenience and necessity authorizing the increase of 6,400 Mcf of natural gas per day of sales entitlements for Northern States Power Company (NSP), a gas utility customer serving certain communities in Minnesota, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

In order for NSP to serve new and increased requirements in and around the communities of Anoka, Becker, and Marine-on-St. Croix, Minnesota, Northern requests authorization to increase its certificated sales entitlements to NSP by a total of 6,400 Mcf per day, under Northern's seasonal Service Demand Schedule, Rate Schedule SS-1. Northern states, pursuant to an executed service agreement dated July 12, 1990, that the increased sales service would become effective on November 1, 1990 or on the date of the Commission's Order approving the instant application, whichever is later, and continue in effect through March 26, 1991. Northern further states that the additional sales service could be accomplished without constructing new facilities or rearranging presently authorized facilities.

Comment date: October 17, 1990, in accordance with Standard Paragraph F at the end of this notice.

2. Panhandle Eastern Pipe Line Company

[Docket Nos. CP90-2271-000, CP90-2272-000, CP90-2273-000, and CP90-2274-000]

September 26, 1990.

Take notice that Panhandle Eastern Pipe Line Company, P.O. Box 1642, Houston, Texas 77251-1642, (Applicant), filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP86-585-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[1]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

Comment date: November 13, 1990, in accordance with Standard Paragraph G at the end of this notice.

[1] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual dt	Receipt points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP90-2271-000 (9-21-90)	Alsey Refractories Co.	385 385 103,000	IL	IL	8-1-90, PT, Firm	ST90-4555, 8-1-90.
CP90-2272-000 (9-21-90)	Entrade Corp. (Marketer).	300,000 100,000 36,500,000	CO, KS	KS	10-18-89, PT, Interruptible.	ST90-4558, 8-1-90.
CP90-2273-000 (9-21-90)	Enron Gas Marketing, Inc. (Marketer).	200,000 200,000 73,000,000	KS, CO, OK, TX	KS	6-5-89, PT, Interruptible.	ST90-4516, 8-1-90.
CP90-2274-000 (9-21-90)	Hadson Gas Systems, Inc.	30,000 30,000 10,950,000	KS, CO	KS	10-23-89, PT, Interruptible.	ST90-4511, 8-1-90.

3. Questar Pipeline Company

[Docket No. CP90-2246-000]

September 26, 1990.

Take notice that on September 19, 1990,[2] Questar Pipeline Company (Questar Pipeline), 79 South State Street, Salt Lake City, Utah 84111, filed in Docket No. CP90-2246-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of Thermal Exploration (Thermal), under Questar's blanket certificate issued in Docket No. CP88-650-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Questar requests authorization to transport, on an interruptible basis, up to a maximum of 2,750 MMBtu of natural gas per day for Thermal from a receipt point located in Lincoln County, Wyoming to delivery points located in Lincoln and Sweetwater Counties, Wyoming. Questar anticipates transporting 2,000 MMBtu of natural gas on an average day and an annual volume of 730,000 MMBtu.

Questar states that the transportation of natural gas for Thermal commenced January 3, 1990, as reported in Docket No. ST90-1701-000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to Questar in Docket No. CP88-650-000.

Comment date: October 18, 1990, in accordance with Standard Paragraph F at the end of the notice.

4. Northern Natural Gas Company, Division of Enron Corp., Florida Gas Transmission Company, Florida Gas Transmission Company, Florida Gas Transmission Company, Gas Gathering Corporation.

[Docket Nos. CP90-2289-000 [3], CP90-2291-000, CP90-2292-000, CP90-2293-000, and CP90-2295-000

September 27, 1990

Take notice that on September 24 and 25, 1990, Applicants filed in the above referenced dockets, prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under their blanket certificates issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection and in the attached appendix.

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under Section 284.223 of the Commission's Regulations has been provided by the Applicants and is included in the attached appendix.

Applicants state that each of the proposed services would be provided under an executed transportation agreement, and that the Applicants would charge rates and abide by the terms and conditions of the referenced transportation rate schedule(s).

Comment date: November 13, 1990, in accordance with Standard Paragraph G at the end of this notice.

[2] The request was tendered for filing on September 19, 1990; however, the fee required by Section 381.208(a) of the Commission's Rules was not paid until September 21, 1990. Section 381.103 of the Commission's Rules provides that the filing date is the date on which the fee is paid.

[3] These prior notice requests are not consolidated.

Docket No. (date filed)	Applicant	Shipper name	Peak Day [1] avg. annual	Points of receipt	Points of delivery	Start up date, rate schedule	Related [2] dockets
CP90-2289-000 (9-25-90)	Northern Natural Gas Company, Division of Enron Corp., P.O. Box 1188, Houston, TX 77251-1188.	Mock Resources, Inc.	100,000 75,000 36,500,000	IA, KS, MN, NE, NM, OK, SD, TX, WI.	IA, KS, MN, NE, NM, OK, SD, TX, WI.	8-27-90, IT-1	CP86-435-000, ST90-4611-000.
CP90-2291-000 (9-25-90)	Florida Gas Transmission Company, P.O. Box 1188, Houston, TX 77251-1188.	Union Texas Petroleum Corporation.	100,000 75,000 36,500,000	AL, FL, LA, MS, TX, OFF TX.	FL, LA, MS.	8-4-90, ITS-1	CP89-555-000, ST90-4586-000.

Docket No. (date filed)	Applicant	Shipper name	Peak Day [1] avg. annual	Points of		Start up date, rate schedule	Related [2] dockets
				receipt	delivery		
CP90-2292-000 (9-25-90)	Florida Gas Transmission Company, P.O. Box 1188, Houston, TX 77251-1188.	Paragon Gas Corporation.	40,000 30,000 14,600,000	AL, FL, LA, MS, TX, OFF TX.	AL, FL, LA, MS, TX..	8-4-90, ITS-1	CP89-555-000, ST90-4582-000.
CP90-2293-000 (9-25-90)	Florida Gas Transmission Company, P.O. Box 1188, Houston, TX 77251-1188.	Howell Gas Management Company.	50,000 37,500 18,250,000	Al, FL, LA, MS, TX, OFF TX.	AL, FL, LA, MS, TX..	8-4-90, ITS-1	CP89-555-000, ST90-4579-000.
CP90-2295-000 (9-24-90)	Gas Gathering Corporation, P.O. Box 519, Hammond, LA 70404.	U.S. Exploration Company.	5,000 2,000 720,000	LA	LA	8-23-90, IT-1	CP86-129-000, ST90-4580-000.

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

5. Florida Gas Transmission Company

[Docket Nos. CP-90-2266-000, CP-90-2267-000, CP-90-2268-000, CP-90-2269-000, and CP-90-2270-000]

September 27, 1990.

Take notice that the above referenced companies (Applicants) filed in respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under blanket certificates issued pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[4]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under Section 284.223 of the Commission's Regulations has been provided by the Applicants and is included in the attached appendix.

The Applicants also state that each would provide the service for each shipper under an executed transportation agreement, and that the Applicants would charge rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: November 13, 1990, in accordance with Standard Paragraph G at the end of this notice.

[4] These prior notice requests are not consolidated.

Docket number (date filed)	Applicant	Shipper name	Peak day [1] avg. annual	Points of		Start up date rate schedule	Related [2] dockets
				receipt	delivery		
CP90-2266-000 9/21/90	Florida Gas Transmission Company.	Mobil Rocky Mountain, Inc..	200,000 150,000 73,000,000	TX, LA, MS, AL, FL, Offshore Federal Domain.	TX, LA, MS, AL, FL.	ITS-1 Interruptible 8-4-90.	RP89-50-000 ST90-4580-000.
CP90-2267-000 9/21/90	Florida Gas Transmission Company.	Mobil Exploration & Producing North America, Inc..	200,000 150,000 73,000,000	TX, LA, MS, AL, FL, Offshore Federal Domain.	TX, LA, MS, AL, FL.	ITS-1 Interruptible 8-4-90.	RP89-50-000 ST90-4576-000.
CP90-2268-000 9/21/90	Florida Gas Transmission Company.	Mobil Natural Gas, Inc..	200,000 150,000 73,000,000	TX, LA, MS, AL, FL, Offshore Federal Domain.	TX, LA, MS, AL, FL.	ITS-1 Interruptible 8-4-90.	RP89-50-000 ST90-4575-000.
CP90-2269-000 9/21/90	Florida Gas Transmission Company.	Mobil Oil Corporation.	200,000 150,000 73,000,000	TX, LA, MS, AL, FL, Offshore Federal Domain.	TX, LA, MS, AL, FL.	ITS-1 Interruptible 8-4-90.	RP89-50-000 ST90-4576-000.
CP90-2270-000 9/21/90	Florida Gas Transmission Company.	Mobil Oil Exploration & Producing Southeast, Inc..	200,000 150,000 73,000,000	TX, LA, MS, AL, FL, Offshore Federal Domain.	TX, LA, MS, AL, FL.	ITS-1 Interruptible 8-4-90.	RP89-50-000 ST90-4583-000.

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

6. Transwestern Pipeline Company

[Docket No. CP90-2294-000]

September 27, 1990.

Take notice that on September 28, 1990, Transwestern Pipeline Company (Transwestern) 400 Smith Street, Houston, Texas 77002, filed in Docket No. CP90-2294-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain pipeline, compression, metering and related facilities in the States of New Mexico and Arizona and approval of initial transportation rates, all as more fully set forth in the application on

file with the Commission and open to public inspection.

Transwestern requests that the Commission authorize the construction and operation of the following facilities: (1) a compressor station of approximately 7950 horsepower with metering and appurtenant facilities, to be located near the City of Bloomfield, San Juan County, New Mexico where Transwestern will interconnect with the facilities of several entities, including several gas plants and the proposed pipelines of Northwest Pipeline Company and TransColorado Gas Transmission; (2) approximately 96.8 miles of 30-inch pipeline (the "San Juan Lateral") extending from the proposed Bloomfield Compressor Station to a point on Transwestern's existing mainline near Station No. 5, the Thoreau Compressor Station, in McKinley County, New Mexico; (3) approximately 199.0 miles of 30-inch mainline looping (in five segments) between the terminus of the proposed San Juan Lateral and the terminus of Transwestern's existing mainline on the Arizona-California border near Needles, California (the "Mainline Expansion"); (4) two meter stations with minor interconnecting pipeline facilities at points on Transwestern's mainline in the State of Arizona, one near Flagstaff, Coconino County, and one near Kingman, Mohave County; and (5) approximately 3.5 miles of 24-inch and 30-inch pipeline, together with metering and appurtenant facilities at its existing Needles measuring station, extending from a point on Transwestern's mainline near its terminus to a proposed interconnection on the Arizona-California border (at the centerline of the Colorado River) with the Colorado River Pipeline Company.

Transwestern estimates the cost of construction for the proposed facilities to be $258 million. Transwestern proposes to accomplish permanent financing of the project by issuing approximately $129,040,000 of long-term debt and obtaining an additional $123,945,000 of equity contributions from its parent company, Houston Pipeline Company. Transwestern proposes to finance the project in a manner which will result in a total capitalization ratio of 50% debt and 50% equity at the commencement of all the proposed facilities.

Transwestern explains that the proposed expansion will add 340,000 Mcf/d of capacity to its mainline system and that upon completion of construction, Transwestern will be able to move over 1.06 Bcf/d to the State of California.

In order to solicit requests for firm transportation service on the proposed San Juan Lateral, Transwestern reports that it initially conducted a twenty-four day open season period, from June 21 through July 15, 1989, during which time all firm requests submitted would be treated as if received at the same time, for purposes of allocating new capacity on the proposed extension. Subsequently, Transwestern explains the open season was extended to include the proposed Mainline Expansion and reopened for three addition open season periods with the last period closing June 29, 1990. Transwestern advises that firm requests received after the last open period would be entered on its log and processed as any other non-open season request. As to requests for interruptible service on the proposed San Juan Lateral and Mainline Expansion, Transwestern asserts that these requests would be accepted on a first-come first serve basis after the proposed facilities are in service. In addition, Transwestern asserts that shippers currently on Transwestern's interruptible log will be able to add receipt points located on the proposed facilities without losing their priority rights.

As a result of the open season periods, Transwestern states that it has negotiated precedent agreements with nine shippers for firm transportation services totaling 509,000 dth per day on the proposed San Juan Lateral, and precedent agreements with six of these shippers for firm transportation services totaling 285,500 dth per day on its mainline. These shippers and related services are as follows:

	Volumes (Mdth/d)		Term (Yrs.)
	San Juan	Mainline	
Pacific Gas and Electric Co.	213	200	15
Southern California Gas Co.	200	0	14
Sunrise Energy Co.	50	50	15
Southern Union Gas Co.	25	25	15
Mesa Operating Limited Partnership	10	0	10
Signal Fuels Trading Co., Inc.	5	5	15
Robert L. Bayless	3	3	15
Bonneville Fuels Corp.	2.4	2.4	15
Industrial Gas Sales	1	0	15
Total Volumes	509.4	285.4	

Transwestern anticipates to render the above firm transportation services pursuant to its blanket transportation certificate issued on March 1, 1988, in Docket No. CP88-133-000. In Docket No. CP90-2294-000, Transwestern also requests approval of its proposed initial rates for transportation services to be rendered on the San Juan Lateral. Transwestern states that its initial rates are based on the cost of service associated with the proposed San Juan facilities. The initial rates proposed would consist of a reservation charge of $0.0710 per dth of contract demand, a maximum commodity rate of $0.0405 and a minimum commodity charge of $0.0100. With respect to service on its mainline facilities, Transwestern explains that it would charge its effective "West of Roswell zone FTS-1 rates" which were included in the Stipulation and Agreement filed for Docket No. RP89-48-000, *et al.* Transwestern states that this stipulation and agreement is currently pending Commission action. Transwestern also seeks approval of its proposed interruptible rates for transportation on its proposed San Juan lateral. The proposed maximum commodity rate for interruptible services on the San Juan Lateral is proposed be $0.0973 per dth and minimum commodity rate is proposed to be $0.100.

Transwestern maintains that its proposed facilities will connect up to 520,000 Mcf/d of natural gas produced in the San Juan Basin (located in Northwestern New Mexico and Southwestern Colorado) directly to its system and will also attach, through proposed interconnections with other interstate systems, gas produced in the Piceance Basin as well as in the Rocky Mountain area. Transwestern estimates that the total deliverability from the San Juan Basin and surrounding areas will exceed 2.9 Bcf/d while the existing pipeline capacity out of this area is only 1.9 Bcf/d.

Transwestern requests that the Commission consider its application in Docket No. CP90-2294-000 in two "phases": (1) all non-environmental issues and (2) environmental issues. Transwestern also request that the non-environmental certificate allow Transwestern to proceed with the construction of those portions of the facilities which are not in environmentally/archaeologically sensitive areas, and to proceed with construction of the remaining segments of the project as environmental clearances for such segments are received in accordance with the requirements of any mitigation plan.

Transwestern states that it would assume the risks associated with complying with any mitigation plan, including rerouting, if necessary.

The Commission advises all interested parties that it intends to hold a technical conference to discuss any issues raised by the application or by any interventions requiring Commission review. Notice of the technical conference for Docket No. CP90–2294–000 will be announced at a later date.

Comment date: October 18, 1990, in accordance with Standard Paragraph F at the end of this notice.

7. Colorado Interstate Gas Company

[Docket No. CP90–2257–000]

September 27, 1990.

Take notice that on September 21, 1990, Colorado Interstate Transmission Corporation (CIG), Post Office Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP90–2257–000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations for authorization to add a delivery point for service to Williams Natual Gas Company (William), an existing customer, under CIG's blanket certificate issued in Docket No. CP83–21–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

In response to a request by Williams, CIG proposes to add the existing Riner Delivery Point located in Sweetwater County, Wyoming for delivery of gas to Williams. CIG states that it transports gas for Williams under Rate Schedule X–14 of CIG's FERC Gas Tariff, Original Volume No. 2, pursuant to the terms of a gas purchase and exchange agreement dated March 11, 1976, as amended, and the authorization granted in Docket No. CP76–422. It is stated that the gas delivered to the proposed delivery point would be for Williams' system supply.

CIG indicates that there would be no change in Williams' certificated entitlement as a result of the addition of the delivery point. CIG states that the proposal would have no adverse impact on its gas supply situation or on its ability to deliver the peak day or annual entitlements to any of CIG's existing customers and that the anticipated deliveries resulting from the proposal would be accommodated by CIG's existing system without detriment or disadvantage to its other customers. It is stated that the proposed addition is not prohibited by CIG's FERC Gas tariff. CIG indicates that no new facilities would be necessary for this proposal.

Comment date: November 13, 1990, in accordance with Standard Paragraph G at the end of this notice.

8. U–T Offshore System

[Docket Nos. CP90–2305–000 and Docket No. CP90–2306–000]

September 27, 1990.

Take notice that U-T Offshore System, P.O. Box 1396, Houston, Texas 77251, (U–TOS), filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued by the Commission's Order No. 509 corresponding to the rates, terms and conditions filed in Docket No. RP89–99–000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[6]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by U–TOS and is summarized in the attached appendix.

Comment date: November 13, 1990, in accordance with Standard Paragraph G at the end of this notice.

[6] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual Mcf	Points of		Contract date, rate schedule, service type	Related docket, start up date
			Receipt [1]	Delivery		
CP90–2305–000 (9–26–90)	Koch Hydrocarbon Company (Marketer)	250,000 250,000 91,250,000	OLA	LA	7–1–90, IT, Interruptible.	ST90–4703–000 8–9–90
CP90–2306–000 (9–26–90)	Excel Gas Marketing, Inc. (Marketer)	100,000 100,000 36,500,000	OLA	LA	7–1–90, IT, Interruptible.	ST90–4699–000 8–10–90

[1] Offshore Louisiana is shown as OLA.

9. Equitrans, Inc., Texas Eastern Transmission Corporation, Texas Eastern Transmission Corporation.

[Docket Nos. CP90–2279–000. CP90–2283–000, and CP90–2284–000]

September 27, 1990.

Take notice that Equitrans, Inc., 3500 Park Lane, Pittsburgh, Pennsylvania 15275, and Texas Eastern Transmission Corporation, P .O. Box 2521, Houston, Texas 77252–2521, (Applicants), filed with the Commission in the above-referenced dockets prior notice requests pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to transport natural gas on behalf of various shippers under the blanket certificates issued in Docket No. CP86–553–000 and Docket No. CP88–136–000, as amended, respectively, pursuant to section 7 of the NGA, all as more fully set forth in the requests which are open to public inspection.[7]

Information applicable to each transaction, including the shipper's identity; the type of transportation service; the appropriate transportation rate schedule; the peak day, average day, and annual volumes; the service initiation dates; and the related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix.

Comment date: November 13, 1990, in accordance with Standard Paragraph G at the end of this notice.

[7] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual MMBtu	Points of		Contract date, rate schedule, service type	Related docket, start up date
			Receipt [1]	Delivery		
CP90-2279-000 (9-24-90)	Consolidated Fuel Corporation (Marketer	20,482 1,000 365,000	PA, WV	PA	8-2-89, ITS, Interruptible.	ST90-4672 8-1-90
CP90-2283-000 (9-24-90)	Allied Gas Company (Local Distributor)	2,076 2,076 757,740	AL, AR, IL, IN, KY, LA, OLA, MS, MO, NJ, NY, OH, PA, TN, TX, WV	MD	5-22-90, IT-1, Interruptible.	ST90-4266 7-17-90
CP90-2284-000 (9-24-90)	Philiadelphia Electric Company (Local Distributor).	53,104 53,104 19,382,960	AL, AR, IL, IN, KY, LA, OLA, MS, MO, NJ, NY, OH, PA, TN, TX, WV	MD, OH, PA	5-22-90, IT-1, Interruptible.	ST90-4821, 7-18-90

[1] Offshore Louisiana is shown as OLA.

10. Florida Gas Transmission Company

[Docket No. CP90-2276-000 and CP90-2278-000]

September 27, 1990.

Take notice that the above referenced company (Applicant) filed in the respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of a shipper under its blanket certificate issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice request which is on file with the Commission and open to public inspection.

Information applicable to the transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket number and initiation date of the 120-day transaction under § 284.223 of the Commission's Regulations has been provided by the Applicant and is included in the attached appendix.

The Applicant also states that it would provide the service for the shipper under an executed transportation agreement, and that the Applicant would charge rates and abide by the terms and conditions of the referenced transportation rate schedule.

Comment date: November 13, 1990, in accordance with Standard Paragraph G at the end of this notice.

Docket No. (date filed)	Applicant	Shipper name	Peak day [1] avg, annual	Points of		Start up date rate schedule	Related dockets[2]
				Receipt	Delivery		
CP90-2276-000 9-24-90	Florida Gas Transmission Company 1400 Smith St. Houston, TX 77002.	Mobil Producing Texas and New Mexico, Inc.	200,000 150,000 73,000,000	TX, LA, MS, AL, FL, Off TX.	TX, LA, MS, AL, FL...	8-4-90 ITS-1	RP89-50, *et al.* ST90-4584-000
CP90-2278-000 9-24-90	Florida Gas Transmission Company 1400 Smith St. Houston, TX 77002.	Mobil Exploration & Producing U.S. Inc.	200,000 150,000 73,000,000	TX, LA, MS, AL, FL, Off TX.	TX, LA, MS, AL, FL...	8-4-90 ITS-1	RP89-50, *et al.* ST90-4577-000

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to

§ 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 90-23432 Filed 10-3-90; 8:45 am]

BILLING CODE 6717-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 232-011184-003.

Title: Evergreen Marine Corporation (Taiwan) Ltd., Italia di Navigazione S.p.A., Contship Container lines Ltd./Costa Container Lines S.p.A. and Compagnie General Maritime Space Charter and Sailing Agreement.

Parties:

Evergreen Marine Corporation
Italia di Navigazione S.p.A.
Compagnie Generale Maritime
Contship Containerlines Ltd./Costa Container Lines S.p.A

Synopsis: The proposed amendment would delete Contship Containerlines Ltd./Costa Container Lines S.p.A as a party to the Argeement and would change the name of the Agreement to relect the change in membership.

Agreement No.: 203-0111290-002.

Title: Vessel Operators Hazardous Materials Association Agreement.

Parties:

America-Africa-Europe Line GmbH
Atlantic Container Line B.V.
Evergreen Marine Corporation (Taiwan), Ltd.
Farrell Lines, Inc.
Hapag-Lloyd AG
Kawasaki Kisen Kaisha Ltd.
A.P. Moller-Maersk Line
Mitsui O.S.K. Lines, Ltd.
Nippon Yusen Kaisha Line
P&O Containers, Ltd.
Sea-Land Service, Inc.
Wilh. Wilhelmsen Ltd. AS
Zim Israel Navigation Shipping Co., Ltd.
Independent Container Line Ltd.
Columbus Line
Nedlloyd Lijnen B.V.

Synopsis: The proposed amendment would modify section 7.1 of the Agreement to allow ocean carriers under common control to be treated as one party for membership purposes. It would also make other nonsubstantive changes. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Dated: September 28, 1990.

Joseph C. Polking,

Secretary.

[FR Doc. 90-23443 Filed 10-3-90; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

[Docket No. R-0690]

Federal Reserve Bank Services

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final action.

SUMMARY: The Board is adopting a requirement that Reserve Banks notify by telephone all depository institutions that do not have electronic access to Fedwire ("off-line banks") of the receipt of incoming Fedwire third-party funds transfers, including non-value messages that are related to a transfer of funds. Notice will also be provided for settlement transfers and related non-value messages, if the off-line receiving bank has notified its Reserve Bank that it acts on behalf of a respondent institution. In addition to the basic transfer fee (currently $.50), a surcharge per transfer (currently $4.00) will be assessed to the off-line receiving bank for each transfer for which the Reserve Bank attempted to provide telephone notice. Same-day telephone notice of incoming funds transfers to off-line banks will promote efficiency in the payments mechanism by providing timely information, which permits prompt crediting of funds to the accounts of beneficiaries.

EFFECTIVE DATE: January 1, 1991.

FOR FURTHER INFORMATION CONTACT: Louise L. Roseman, Assistant Director (202/452-3874), Julius Oreska, Manager (202/452-3878); Christine G. Slater, Senior Financial Services Analyst (202/452-2539), or Sandra Scales, Financial Services Analyst (202/452-2728), Division of Federal Reserve Bank Operations; for the hearing impaired *only:* Telecommunications Device for the Deaf, Earnestine Hill or Dorothea Thompson (202/452-3544).

SUPPLEMENTARY INFORMATION: Parties to Fedwire funds transfers expect the completion of payments on the same day that the transfers are initiated. Fedwire participants with electronic access to the Reserve Banks receive timely electronic notice of all incoming funds transfers. Off-line banks, however, do not have an electronic connection with the Federal Reserve and are not necessarily notified on the day of the transfer. Without same-day notification, the off-line receiving bank would be unable to credit the account of its customer on the transfer date. Approximately forty-five percent of institutions using Fedwire currently receive funds transfers off-line, although off-line transfers account for less than one percent of total Fedwire volume.

The Federal Reserve currently offers two optional services by which Reserve Banks provide same-day telephone notice to off-line receivers of incoming funds transfers. Under the "standing order" service, the off-line receiving bank requests the telephone notice and pays a surcharge in addition to the basic transfer fee for telephone notice of each incoming funds transfer. The "immediate advice" (type code 12) service enables the sender of the funds transfer to request that the Reserve Bank notify by telephone the off-line receiving bank of a particular funds transfer upon receipt. The sending bank selects specific transfers that should receive telephone notice and pays the surcharge for each transfer selected.

These optional services, by providing the off-line banks prompt notice of incoming funds transfers, enable the banks to make funds available to their customers on a timely basis and better manage their own reserve positions. All off-line banks receive paper advices of credit of Fedwire transfers, which are delivered by courier or mail with the daily account statements. Courier delivery occurs on the next business day; mail delivery usually occurs one or more days after the transfer. The paper

advice of credit is the only means of notifying off-line banks of incoming Fedwire transfers for which telephone notice is not provided.

On May 4, 1990, the Board requested public comment on a proposal to notify by telephone *all* off-line banks of the receipt of incoming third-party funds transfers (55 FR 18758; May 4, 1990).[1] Notice would also be provided for settlement transfers, if the off-line receiving bank has notified its Reserve Bank that it acts in a correspondent capacity for another bank with respect to transfers received through Fedwire.[2] The Reserve Bank would assess a surcharge to the off-line bank on each transfer for which telephone notice was attempted. (The fee for telephone notice is currently $4.00 per transfer in addition to the basic transfer fee.)

Same-day telephone notice of incoming funds transfers to off-line banks would promote efficiency in the payments mechanism by providing timely information, which permits prompt crediting of funds to the accounts of beneficiaries. Both the recently developed Article 4A of the Uniform Commercial Code and the Expedited Funds Availability Act (12 U.S.C. 4001–4010) encourage prompt funds availability and timely notification to receiving institutions and ultimate beneficiaries.

Under Section 4A–302 of Article 4A, a Reserve Bank would be required to execute funds transfers by means reasonably necessary to allow payment to the beneficiary on the payment date or as soon thereafter as is feasible. If a Reserve Bank executes a transfer in a manner that results in a delay in the payment to the beneficiary, the Reserve Bank would be liable for interest to either the originator or the beneficiary under Section 4A–305(a) of Article 4A. The official comments to Section 4A–305 indicate that a bank that delays the execution of a transfer would generally back-value the credit to the beneficiary's bank to compensate for the delay. This is consistent with current Reserve Bank practice, because the Reserve Bank credits the receiving bank on the day of the transfer, even if an off-line bank does not receive notice of the transfer until one or more days later. The off-line receiving bank that credits its beneficiary on a day following the transfer day should similarly by compensating its customer by paying interest on the transfer amount for the period of the delay. Notification to receiving banks on the transfer day would permit them to credit their customer's account on that day, and not have to pay compensation to their customers; this would be consistent with Article 4A's objective to ensure timely payment to the beneficiary.

Regulation CC (12 CFR part 229) requires that depository institutions make the proceeds of funds transfers available to their customers at the start of the business day following the day the depository institution receives the transfer. Section 229.10(b) of Regulation CC defines receipt of an electronic payment as occurring when the bank receives both the payment in finally collected funds and the payment instructions. Therefore, same-day notification of funds transfers would be consistent with the purpose of the Expedited Funds Availability Act to ensure prompt availability of funds.

The Board received 34 comments in response to its proposal to require telephone notice to off-line banks of incoming Fedwire funds transfers. The following table reflects comments by category of respondent:

Commercial banks and bank holding companies	25
Savings and loan associations	1
Credit unions	1
Trade associations	4
Federal Reserve Banks	3

Eight commenters are off-line Fedwire participants; 18 depository institution commenters have on-line access to Fedwire; and one depository institution commenter is not a direct Fedwire participant, but occasionally uses a correspondent bank for funds transfers.

All but one of the commenters supported the proposal. Supporting commenters noted that adoption of the proposal would improve the efficiency of the payments mechanism, ensure compliance with the provisions of Article 4A and Regulation CC, and equitably allocate the costs to the party that benefits from the service. The dissenting commenter argued that off-line banks should not have to pay for telephone notice of incoming funds transfers.

Twenty-one commenters stated that the proposed Fedwire telephone notice service would enhance the efficiency of the payments mechanism, ensuring more timely notification of receipt of funds transfers and crediting of funds to the beneficiaries' accounts. Seven commenters indicated that the new service would improve off-line banks' settlement and reserve account monitoring capability. Eleven commenters noted that the service would facilitate compliance with the funds availability requirements of Article 4A and Regulation CC.

Commenters generally concurred with the pricing aspects of the proposal. Thirteen commenters stated that charging the off-line receiving bank rather than the sending bank for the telephone notice was an equitable allocation of the cost of providing the service.[3] These commenters noted that the off-line receiving bank would receive more timely information to use in managing its reserve position, and the bank's customers would benefit from more timely crediting of funds to their accounts. Moreover, several commenters noted that the receiving bank should pay for the telephone notice as a consequence of its decision to participate in Fedwire as an off-line bank, which directly affects its ability to receive prompt notification.

Several commenters suggested that the current fee may not fully recover the cost of providing telephone notices. The American Bankers Association, Washington, DC., and the United States League of Savings Institutions, Chicago, Illinois, stated that the service pricing should be based on cost, including the private sector adjustment factor, and should be justified in accordance with the Monetary Control Act of 1980. The Independent Bankers Association of America, Washington, DC., and the United States League of Savings Institutions expressed concern about using service pricing as an impetus for off-line banks to establish electronic connections to Fedwire. Other commenters stated that off-line banks obtaining electronic access to Fedwire would improve the efficiency of the payments mechanism, and several commenters suggested that the Federal Reserve should use pricing incentives to achieve this objective.

The funds transfer service fees, including the fee for telephone notice, are set to recover the cost of the funds transfer service in accordance with the provisions of the Monetary Control Act and the Board's pricing principles, and

[1] "Third-party" funds transfers refer to all regular funds transfers (type code 10) regardless of whether these transfers include third-party information.

[2] Revised subpart B of Regulation J provides that an off-line bank that does not expressly notify its Reserve Bank in writing that it maintains an account for another bank warrants to that Reserve Bank that the off-line bank does not act as an intermediary bank or a beneficiary's bank with respect to payment orders received through Fedwire for a beneficiary that is a bank. [*See* § 210.29(b).]

[3] The telephone notice service would replace the current immediate advice service (type code 12), in which the sending bank requests and pays for the telephone notice of a Fedwire transfer to an off-line receiving bank. Transfers submitted as type code 12 would therefore be handled in the same manner as type code 10 transfers. The Board anticipates that the type code 12 message format would no longer be supported as of July 1, 1991.

are not set to provide inducements to off-line banks to acquire electronic connections to their Reserve Banks. Nevertheless, in response to the telephone notice service, some off-line banks may reassess whether off-line Fedwire service continues to best address their own and their customers' needs and may find it more cost-effective to establish electronic connections with their Reserve Bank rather than pay for telephone notices.

The Chase Manhattan Corporation, New York, New York, the American Bankers Association, and the Independent Bankers Association of America were concerned that an off-line bank would be charged for an attempted telephone notice, even if the Reserve Bank was not successful in contacting the receiving bank. Under the telephone notice service, the Reserve Bank would make several attempts to notify an off-line bank. If an off-line bank cannot be reached on the date of the transfer, then the Reserve Bank staff would attempt to notify the off-line bank soon after the bank opens for business on the next business day. Reserve Banks will charge off-line banks for each transfer requiring telephone notice, even if the notification attempts were unsuccessful, because the Reserve Banks would incur the costs of repeatedly trying to reach the off-line banks.

The United States League of Savings Institutions suggested that the Reserve Banks should accumulate transfers and notify the off-line banks only two or three times per day and charge on the basis of each notification call. The Board believes that notifying off-line banks at predetermined intervals would result in less timely notice and would diminish the benefits of telephone notice. Also, the cost a Reserve Bank incurs to provide telephone notice of incoming transfers varies in proportion to the amount of information provided, that is, with the number of transfers received. Therefore, off-line banks will be notified promptly after receipt of each Fedwire message and charged on the basis of each message.

Several commenters suggested other modifications to the proposed service. Bankers Trust Company, New York, New York, requested that telephone notice be provided for all Fedwire messages, including non-value messages.[4] The Board believes that providing prompt notice for non-value Fedwire messages, which are often time-critical, would promote efficiency in the payments mechanism. Therefore, telephone notice will be provided for these messages.

Twelve commenters stated that the Board should require Fedwire participants to be electronically linked to a Reserve Bank for funds transfer service. These commenters stated that the Board should set a sunset date by which all participants would be required to have electronic access to Fedwire. The Reserve Banks have developed and currently offer banks an intelligent terminal software product, known as FLASH-Light, which enables the Reserve Banks to transmit ACH output data electronically in a print-display format to low-volume receiving banks. To facilitate inexpensive, electronic access for Fedwire notices, the Board anticipates that the Reserve Banks will enhance the FLASH-Light product to provide Fedwire notices and will begin offering this capability to off-line banks during the third quarter of 1991. The Federal Reserve will continue to seek enhancements that would facilitate electronic access.

Wells Fargo Bank, San Francisco, California, noted that telephone notice of incoming Fedwire transfers presents security and operational risks. The Reserve Banks will reiterate to off-line banks the importance of calling the Reserve Bank to confirm the validity and accuracy of all Fedwire telephone notices received. The Reserve Banks will continue to evaluate possible off-line security enhancements, which may be implemented in the future.

First Chicago Corporation, Chicago, Illinois, recommended that the Reserve Banks provide an account status inquiry capability for off-line banks. Several Reserve Banks have implemented an account balance inquiry capability for their Fedwire participants, including off-line banks, and the remaining Reserve Banks are considering offering this capability.

Based on an analysis of the comments received, the Board has adopted a requirement that Reserve Banks notify by telephone all depository institutions that do not have electronic access to Fedwire of the receipt of incoming Fedwire third-party funds transfers and related non-value messages. Notice will also be provided for settlement transfers and related non-value messages, if the off-line receiving bank has notified its Reserve Bank that it may receive Fedwire transfers for credit to a respondent institution. An off-line bank that does not maintain an account for another depository institution will not be required to receive telephone notice of incoming settlement transfers, but could request such notice as an optional service. Transfers to off-line receiving banks from foreign central banks and international agencies (type code 15) will also be subject to the telephone notice service. A per transfer surcharge will be assessed to the off-line receiving bank for each transfer for which the Reserve Bank attempted to provide telephone notice.

The telephone notice service will be implemented on January 1, 1991. This fall, the Board will adopt the 1991 funds transfer fees, including the telephone notice surcharge, as part of the 1991 fee schedules for Federal Reserve priced services.

Competitive Impact Analysis. The Board believes that this action will have no adverse effect on the ability of other service providers to compete effectively with the Federal Reserve in providing similar services. Several commenters concurred with the Board's belief that implementing the telephone notice service would have no effect on the operations of the Clearing House Interbank Payments System (CHIPS), because this system does not serve off-line banks.

Correspondent institutions provide access to Fedwire to a number of small institutions, and this action generally will not affect the correspondents' relationship with their respondent institutions. The American Bankers Association and the Chase Manhattan Corporation noted that a sending bank, knowing that an off-line bank would receive telephone notice from its Reserve Bank, may bypass the off-line bank's correspondent bank and remit the funds transfer directly to the off-line bank. The Board believes that relatively few off-line banks would typically receive third-party funds transfers both directly from their Reserve Bank as well as through a designated correspondent account, and that any adverse effect on correspondent services stemming from the proposed telephone notice service would be minimal.

By order of the Board of Governors of the Federal Reserve System, September 28, 1990.

William W. Wiles,

Secretary of the Board.

[FR Doc. 90-23463 Filed 10-3-90; 8:45 am]

BILLING CODE 6210-01-M

[4] Non-value Fedwire messages refer to Fedwire messages designated as subtype 01 (request for reversal), 07 (request for reversal of prior day transfer), 31 (request for credit transfer), 33 (refusal of request for funds), or 90 (service message).

The Adirondack Trust Co. Employee Stock Ownership Plan et al.; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and section 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. § 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 18, 1990.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *The Adirondack Trust Company Employee Stock Ownership Plan*, Saratoga Springs, New York; to acquire 14.83 percent of the voting shares of 473 Broadway Holding Corporation, Saratoga Springs, New York, and thereby indirectly acquire The Adirondack Trust Company, Saratoga Springs, New York.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Liberty Bank Stock Bonus Plan and Trust*, Milwaukee, Wisconsin; to acquire 15.99 percent of Class C Preferred Stock of Liberty Bank, Milwaukee, Wisconsin.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 61366:

1. *Wayne O'Keefe*, Vienna, Illinois; to acquire 19.95 percent of the voting shares of 1st Bancorp Vienna, Inc., Vienna, Illinois, and thereby indirectly acquire First State Bank of Vienna, Vienna, Illinois.

D. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Phillip Forstrum*, Perry Forstrum, Paul Forstrum, and John Forstrom, to each acquire 25 percent of the voting shares of Forstrum Bancorporation, Inc., Clara City, Minnesota, as the result of a stock redemption, and thereby indirectly acquire Citizens State Bank of Clara City, Clara City, Minnesota, and Security State Bank of Howard Lake, Howard Lake, Minnesota.

E. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *C.O. Ballentine Loving Trust*, to acquire 58.7 percent; and Katy L. Ballentine Loving Trust, to acquire 41.2 percent of the voting shares of Drexel Bancshares, Inc., Drexel, Missouri, and thereby indirectly acquire Bank 10, Drexel, Missouri.

F. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *John E. Holton, Sr.*, to acquire 29.0 percent; John E. Holton, Jr., to acquire 29.0 percent; Terry Canada, to acquire 2.0 percent; James Masten, to acquire 3.0 percent; John Forbis, to acquire 4.0 percent; John Coffee, to acquire 2.0 percent; Billy Mac Sims, to acquire 3.0 percent; Randall Sims, to acquire 1.0 percent; Richard Sims, to acquire 1.0 percent; Richard Fourmentin, to acquire 4.0 percent; Carl Wischkaemper, to acquire 3.0 percent; Carthel Lewis, to acquire 2.0 percent; Jerol Morris, to acquire 1.0 percent; Dannie Morris, to acquire 1.0 percent; Wellington Industries, Inc., to acquire 2.0 percent; Lennie Sims, to acquire 1.0 percent; Don Kiker, to acquire 2.0 percent; Walter Camp, to acquire 2.0 percent; Danny Martin, to acquire 1.0 percent; Warrick's Inc., to acquire 1.0 percent; Millard P. Brown, to acquire 1.0 percent; Elmer Harold Keller, to acquire 2.0 percent; J.B. Oney, to acquire 1.0 percent; Billy Henard, to acquire 1.0 percent; and Hybert Brooks, to acquire 1.0 percent of the voting shares of Wellington State Bank, Wellington, Texas. All of the notificants reside in Wellington, Texas.

G. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Assistant Vice President) 101 Market Street, San Francisco, California 94105:

1. *Dr. Roger Chih-Shen Lin*, Honolulu, Hawaii; to acquire 100 percent of the voting shares of EastWest Financial Group, Inc., Honolulu, Hawaii, and thereby indirectly acquire EastWest Bank, National Association, Kihei, Hawaii.

2. *Shirley W. Nelson*, Alamo, California; to acquire an additional 1.37 percent of the voting shares of Summit Bancshares, Inc., Oakland, California, for a total of 12.13 percent, and thereby indirectly acquire Summit Bank, Oakland, California.

Board of Governors of the Federal Reserve System, September 28, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-23464 Filed 10-3-90; 8:45 am]

BILLING CODE 6210-01-M

Rurban Financial Corp. et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than October 24, 1990.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Rurban Financial Corp.*, Defiance, Ohio; to acquire 100 percent of the voting shares of The First National Bank of Ottawa, Ottawa, Ohio.

B. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Mountain-Valley Bancshares, Inc.*, Parsons, West Virginia; to acquire 100 percent of the voting shares of Bank of Mill creek, Mill Creek, West Virginia.

C. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Automotive Financial Services, Inc*, Kenner, Louisiana; to become a bank holding company by acquiring 94.86 percent of the voting shares of

Merchants Trust & Savings Bank, Kenner, Louisiana.

2. *BJC Holdings, Inc.*, Graceville, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Jackson County, Graceville, Florida.

3. *Southwest Florida Banks, Incorporated*, Murdock, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Southwest Florida Bank, National Association, Murdock, Florida; a *de novo* bank.

D. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Pinnacle Banc Group*, Oak Brook, Illinois; to acquire 100 percent of the voting shares of The Berwyn National Bank, Berwyn, Illinois.

2. *Royal American Corporation*, Inverness, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Royal American Bank, Inverness, Illinois.

3. *TNB Bancorp, Inc.*, Tuscola, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Tuscola National Bank, Tuscola, Illinois.

E. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Glasgow Bancshares Corporation*, Glasgow, Kentucky; to acquire at least 88 percent of the voting shares of Bowling Green Bank & Trust Company, National Association, Bowling Green, Kentucky.

F. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Emprise Financial Corp.—East*, Wichita, Kansas; to merge with Sierra Petroleum Company, Inc., Wichita, Kansas, and thereby indirectly acquire Emprise Bank, Wichita, Kansas; Emprise Financial Corp.—Hutchinson, Wichita, Kansas; and Emprise Bank, N.A., Hutchinson, Kansas.

2. *Fourth Financial Corporation*, Wichita, Kansas; to merge with American Bank Shares, Inc., Great Bend, Kansas, and thereby indirectly acquire American State Bank and Trust Co., Great Bend, Kansas.

3. *First Bancorp of Kansas*, Wichita, Kansas; to acquire 100 percent of the voting shares of Valley Center Bancshares, Inc., Valley Center, Kansas, and thereby indirectly acquire Arkansas Valley State Bank, Valley Center, Kansas. Comments on this application must be received by October 12, 1990.

G. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *First Abilene Bankshares of Delaware, Inc.*, Wilmington, Delaware; to acquire 100 percent of the voting shares of First National Bank in Cleburne, Cleburne, Texas.

Board of Governors of the Federal Reserve System, September 28, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-23465 Filed 10-3-90; 8:45 am]

BILLING CODE 6210-01-M

The Sanwa Bank, Ltd., Osaka, Japan; Application To Engage in Various Interest Rate and Currency Swap, Foreign Exchange, Brokerage of Futures Contracts on Stock and Bond Indices and Options Thereon, Private Placement, "Riskless Principal" and Related Investment Advisory Activities

The Sanwa Bank, Limited, Osaka, Japan ("Sanwa"), has applied pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8) ("BHC Act") and § 225.23(a) of the Board's Regulation Y (12 CFR 225.23(a)), through its wholly-owned subsidiary, Sanwa Securities (Delaware) Inc., Dover, Delaware ("Company"), to engage *de novo* in the following activities:

(1)(a) Intermediating in the international swap markets by acting as an originator and principal in interest rate swap and currency sway transactions;

(b) Acting as an originator and principal with respect to certain risk-management products, such as caps, floors and collars, as well as options on swaps, caps, floors and collars ("swap derivative products");

(c) Acting as a broker or agent with respect to the foregoing transactions and instruments;

(c) Acting as an advisor to institutional customers regarding financial strategies involving interest rate and currency swaps and swap derivative products;

(2) Through Company's primary dealer subsidiary, Sanwa-BGK Securities Company, New York, New York, engaging in foreign exchange spot, forward, options, futures and options on futures transactions for the Company's own account for hedging purposes and for other than hedging purposes and buying and selling foreign exchange for the account of others;

(3) Through Company's wholly-owned subsidiary, Sanwa-BGK Futures, Inc., Chicago, Illinois, a futures commission merchant ("FCM"), providing investment advice and execution and clearance services to affiliates and nonaffiliated persons and institutions regarding futures contracts and options thereon on certain stock and bond indexes traded on major commodity exchanges;

(4) Acting as agent in the private placement of all types of securities, including providing related advisory services, and buying and selling all types of securities on the order of investors as "riskless principal."

These activities would be conducted on a nationwide basis.

Company is currently authorized to engage in the following activities:

(1) Underwriting and dealing in obligations of the United States, general obligations of the states and their political subdivisions, and other obligations that state member banks are authorized to underwrite and deal in under 12 U.S.C. 24 and 335 ("eligible securities", other securities being "ineligible securities") and engaging in incidental activities;

(2) Purchasing and selling, for its own account, futures, forward and options contracts on eligible securities;

(3) Providing portfolio investment advice and research and furnishing general economic information and advice, general economic statistical forecasting services and industry studies in connection with and as an incident to the proposed eligible securities activities;

(4) Providing discount brokerage of securities pursuant to § 225.25(b)(15) of Regulation Y;

(5) Providing advice in connection with financing transactions to nonaffiliated institutions;

(6) Acting as a FCM for nonaffiliated persons in the execution and clearance on major commodity exchanges of futures contracts and options on futures contracts for bullion, foreign exchange, government securities, certificates of deposit, and other money market instruments that a bank may buy or sell in the cash market for its own account, and providing investment advice to institutional customers in conjunction therewith;

(7) Making, acquiring and servicing loans or other extensions of credit pursuant to section 225.25(b)(1) of Regulation Y;

(8) Underwriting and dealing, on a not "engaged principally" basis in the following ineligible securities: (a) certain mortgage-related securities comprised of debt obligations secured by, or representing an interest in, 1–4 family residential mortgages; (b) certain municipal revenue bonds; (c) consumer-

receivable-related securities; and (d) commercial paper; and

(9) Providing securities brokerage and investment advisory services with respect to all types of securities on a combined basis to institutional customers.

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity "which the Board, after due notice and opportunity for hearing, has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto." Sanwa believes that these proposed activities are "so closely related to banking or managing or controlling banks as to be a proper incident thereto."

The Board has previously approved intermediating in the international swap markets by acting as an originator and principal in interest rate swap and currency swap transactions, acting as an originator and principal with respect to swap derivative products, acting as a broker or agent with respect to the foregoing transactions and instruments, and acting as an advisor to institutional customers regarding financial strategies involving the foregoing transactions and instruments. *See The Fuji Bank, Limited,* 76 Federal Reserve Bulletin 768 (1990); *The Sumitomo Bank, Limited,* 75 Federal Reserve Bulletin 582 (1989). Sanwa proposes that company comply with substantially all of the prudential limitations previously relied upon by the Board in approving these activities. *See id.*

The Board has also previously approved engaging in foreign exchange spot, forward, options, futures and options on futures transactions for the Company's own account for hedging purposes and for other than hedging purposes and buying and selling foreign exchange for the account of others. *See Midland Bank, PLC,* 76 Federal Reserve Bulletin—(August 15, 1990); The Bank of Tokyo, Ltd., 76 Federal Reserve Bulletin 654 (1990); *The Nippon Credit Bank, Ltd.,* 75 Federal Reserve Bulletin 308 (1989); *The Hongkong and Shanghai Banking Corporation,* 75 Federal Reserve Bulletin 217 (1989); *Midland Bank, PLC,* 74 Federal Reserve Bulletin 577 (1988). Sanwa proposes that Company would conduct these activities in accordance with substantially all of the prudential limitations relied upon by the Board in these orders and 12 C.F.R. 225.142 (engaging in foreign exchange forward, futures and options contracts for a bank holding company's own account for hedging purposes).

In addition, the Board has previously approved the execution and clearance by a FCM of all of the proposed stock and bond index futures contracts and options thereon, as well as the provision of related investment advice as to substantially all of these instruments. *See, e.g., The Hongkong and Shanghai Banking Corporation,* 76 Federal Reserve Bulletin 770 (1990); *Chemical Banking Corporation,* 76 Federal Reserve Bulletin 660 (1990); *The Long-Term Credit Bank of Japan, Limited,* 76 Federal Reserve Bulletin 554 (1990). Sanwa proposes that Company comply with the conditions set forth in § 225.25(b) (18) and (19) of Regulation Y previously considered by the Board in approving these activities.

Finally, the Board has previously approved the proposed private placement, as agent of the issuer, of all types of securities and buying and selling of all types of securities on the order of investors as "riskless principal." *See, e.g., J.P. Morgan & Company Incorporated,* 76 Federal Reserve Bulletin 26 (1990) ("*J.P. Morgan*"); *Bankers Trust New York Corporation,* 75 Federal Reserve Bulletin 829 (1989) ("*Bankers Trust*"). Sanwa commits that Company will conduct these proposed activities using substantially the same methods and procedures established by the Board in these orders. Sanwa also voluntarily undertakes to conduct these proposed activities in accordance with the prudential limitations set forth in the Board's order approving Sanwa's underwriting of certain bank-ineligible securities, *The Sanwa Bank, Limited,* 76 Federal Reserve Bulletin 568 (1990), as these limitations have been modified by the Board for private placement activities in *J.P. Morgan* and *Bankers Trust.*

Sanwa states that the proposed activities will benefit the public. It believes that they will promote competition and provide added convenience to customers and gains in efficiency. Sanwa takes the position that Company's entry into the swap market will add a significant amount of additional capital to the swap market as a whole. Moreover, Sanwa believes that the proposed activities will not result in any unsound banking practices.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than October 22, 1990. Any request for a hearing on this application must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of San Francisco.

Board of Governors of the Federal Reserve System, September 27, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-23467 Filed 10-3-90; 8:45 am]

BILLING CODE 6210-01-M

TSB Bancorp, Inc., et al.; Notice of Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo,* either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each applicant is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 24, 1990.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *TSB Bancorp, Inc.*, Woodland, Georgia; to engage *de novo* through its subsidiary, Georgia Home Lending Corporation, Peachtree City, Georgia, formerly Tri-City Mortgage Corporation, in loan marketing services pursuant to § 225.25(b)(1) of the Board's Regulation Y.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Chicago Corporation*, Chicago, Illinois; to engage *de novo* through its subsidiary, Brinson Trust Company, Chicago, Illinois, in performing trust company functions pursuant to § 225.25(b)(3); and acting as investment or financial advisor pursuant to § 225.25(b)(4) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, September 28, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-23466 Filed 10-3-90; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Division of Research Grants; Meetings

Pursuant to Public Law 92-463, notice is hereby given of the meetings of the following study sections for October through November 1990, and the individuals from whom summaries of meetings and rosters of committee members may be obtained.

These meetings will be open to the public to discuss administrative details relating to study section business for approximately one hour at the beginning of the first session of the first day of the meeting. Attendance by the public will be limited to space available. These meetings will be closed thereafter in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92-463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Office of Committee Management, Division of Research Grants, Westwood Building, National Institutes of Health, Bethesda, Maryland 20892, telephone 301-496-7534 will furnish summaries of the meetings and rosters of committee members. Substantive program information may be obtained from each executive secretary whose name, room number, and telephone number are listed below each study section. Since it is necessary to schedule study section meetings months in advance, it is suggested that anyone planning to attend a meeting contact the executive secretary to confirm the exact date, time and location. All times are a.m. unless otherwise specified.

Study Section	October-November 1990 meeting	Time	Location
AIDs & Related Research 1: Dr. Sami Mayyasi, Rm. A13, Tel. 301-496-0012	Nov. 5-6	8:30	Holiday Inn, Bethesda, MD.
AIDs & Related Research 2: Dr. Gilbert Meier, Rm. A10, Tel. 301-496-5191	Nov. 2	8:30	Holiday Inn, Chevy Chase, MD.
AIDs & Related Research 3: Dr. Marcel Pons, Rm. A13, Tel. 301-496-7286	Oct. 29-31	8:30	Holiday Inn, Bethesda, MD.
AIDs & Related Research 4: Dr. Mohinder Poonian, Rm. A10, Tel. 301-496-4666	Nov. 13-14	8:30	Holiday Inn, Bethesda, MD.
AIDs & Related Research 5: Dr. Kendall Powers, Rm. A10, Tel. 301-496-4673	Nov. 15-16	8	Holiday Inn, Bethesda, MD.
AIDs & Related Research 6: Dr. Gilbert Meier, Rm. A10, Tel. 301-496-5191	Nov. 5	8:30	Holiday Inn, Chevy Chase, MD.
AIDs & Related Research 7: Dr. Kendall Powers, Rm. A10, Tel. 301-496-4673	Nov. 9	8	Marriott Hotel, Pooks Hill, Bethesda, MD.
Behavioral and Neurosciences-1: Dr. Luigi Giacometti, Rm. 303, Tel. 301-496-5352	Nov. 14-16	9	The Savoy Suites Hotel, Washington, DC.
Behavioral and Neurosciences-2: Dr. Luigi Giacometti, Rm. 303, Tel. 301-496-5352	Nov. 8	8:30	Omni Shoreham Hotel, Washington, DC.
Biological Sciences-1: Dr. James R. King, Rm. A22, Tel. 301-496-1067	Nov. 14-16	8:30	St. James Hotel, Washington, DC.
Biological Sciences-2: Dr. Syed Amir, Rm. 326, Tel. 301-496-3117	Nov. 12-14	8:30	Congressional Park Days Inn, Rockville, MD.
Biological Sciences-3: Mr. Gene Headley, Rm. A27, Tel. 301-496-6724	Nov. 19-20	8:30	St. James Hotel, Washington, DC.
Biological Sciences: Dr. Charles Baker, Rm. 219, Tel. 301-496-7150	Nov. 12-14	8:30	Holiday Inn, Bethesda, MD.
Clinical Sciences-1: Ms. Jo Pelham, Rm. 353, Tel. 301-496-7477	Nov. 15-16	8:30	Holiday Inn, Chevy Chase, MD.
Clinical Sciences-2: Ms. Jo Pelham, Rm. 353, Tel. 301-496-7477	Nov. 29-30	8:30	Holiday Inn Crowne Plaza, Rockville, MD.
Immunology, Virology & Pathology: Dr. Lynwood Jones, Rm. A20, Tel. 301-496-7510	Nov. 14-16	8:30	Holiday Inn, Chevy Chase, MD.
International & Cooperative Projects: Dr. Sandy Warren, Rm. 222, Tel. 301-496-7600	Nov. 28-30	8:30	Hyatt Regency Hotel, Bethesda, MD.
Physiological Sciences: Dr. Nicholas Mazarella, Rm. 222, Tel. 301-496-1069	Nov. 14-15	8:30	Holiday Inn, Georgetown, DC.

(Catalog of Federal Domestic Assistance Program Nos. 13.306, 13.333, 13.337, 13.393–13.396, 13.837–13.844, 13.846–13.878, 13.892, 13.893, National Institutes of Health, HHS)

Dated: September 24, 1990.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 90–23446 Filed 10–3–90; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Dental Research; Meeting of Dental Research Programs Advisory Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Dental Research Programs Advisory Committee, National Institute of Dental Research, October 29–31, 1990. The meeting will be held in the Montgomery-Democracy Room in the Pooks Hill Marriott, Bethesda, Maryland, on October 29, from 8 p.m. to recess. On October 30–31 the meeting will be held in Conference Room 6, Building 31, National Institutes of Health, Bethesda, Maryland. The meeting will convene on both days at 8:30 a.m. and recess at 5 p.m. on October 30, and adjourn at 1 p.m. on October 31.

The entire meeting will be open to the public to discuss research progress and ongoing plans and programs on the causes, nature, diagnosis, treatment and prevention of oral diseases and conditions. Attendance by the public will be limited to space available.

Dr. Wayne Wray, Deputy Director for Extramural Program, NIDR, NIH, Westwood Building, room 502, Bethesda, MD 20892 (telephone 301/496–7748) will provide a summary of the meeting, roster of committee members and substance program information upon request.

(Catalog of Federal Domestic Assistance Program Nos. 13.121—Diseases of the Teeth and Supporting Tissues: Caries and Restorative Materials; Periodontal and Soft Tissue Diseases; 13.122—Disorders of Structure, Function, and Behavior, Craniofacial Anomalies, Pain Control, and Behavioral Studies; 13.845—Dental Research Instituties, National Institutes of Health.)

Dated: September 26, 1990.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 90–23447 Filed 10–3–90; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Diabetes and Digestive and Kidney Diseases; Meeting; National Kidney and Urologic Diseases Advisory Board

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Kidney and Urologic Diseases Advisory Board on November 19, 1990. The Board meeting will begin at 8 a.m. to approximately 3:30 p.m. at the Crystal City Marriott Hotel, 1999 Jefferson Davis Highway, Arlington, Virginia 22202. The meeting, which will be open to the public, is being held to discuss the Board's activities and the development of the long range plan to combat kidney and urologic diseases. Attendance by the public will be limited to space available. Notice of the meeting room will be posted in the hotel lobby.

Dr. Ralph Bain, Executive Director, National Kidney and Urologic Diseases Advisory Board, 1801 Rockville Pike, suite 500, Rockville, Maryland 20852, (301) 496–6045, will provide on request an agenda and roster of the members. Summaries of the meeting may also be obtained by contacting his office.

Dated: September 26, 1990.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 90–23448 Filed 10–3–90; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Diabetes and Digestive and Kidney Diseases; Meetings of Subcommittees B, C, and D of the Diabetes and Digestive and Kidney Diseases Special Grants Review Committee

Pursuant to Public Law 92–463, notice is hereby given of the meetings of Subcommittees B, C, and D of the National Diabetes and Digestive and Kidney Diseases Special Grants Review Committee, National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK).

These meetings will be open to the public to discuss administrative details at the beginning of the first session of the first day of the meetings. Attendance by the public will be limited to space available. Notice of the meeting rooms will be posted in the hotel lobby.

These meetings will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, for the review, discussion, and evaluation of individual research grant applications. Discussion of these applications could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winnie Martinez, Committee Management Officer, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, Building 31, room 9A19, Bethesda, Maryland 20892, 301–496–6917, will provide summaries of the meetings and rosters of the committee members upon request. Other information pertaining to the meetings can be obtained from the Executive Secretary indicated.

Name of Committee: National Diabetes and Digestive and Kidney Diseases, Special Grants Review Committee, Subcommittee B.

Executive Secretary: Judith M. Podskalny, Westwood Building, room 421A, National Institutes of Health, Bethesda, Maryland 20892, Phone: 301–496–7583.

Dates of Meeting: October 25, 1990.

Place of Meeting: Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, Maryland 20815.

Open: October 25, 1 p.m.–2 p.m.

Closed: October 25, 2 p.m. to adjournment.

Name of Committee: National Diabetes and Digestive and Kidney Diseases, Special Grants Review Committee, Subcommittee C.

Executive Secretary: Daniel Matsumoto, Westwood Building, room 404B, National Institutes of Health, Bethesda, Maryland 20892, Phone: 301–496–8830.

Dates of Meeting: November 1, 1990.

Place of Meeting: Guest Quarters, 7335 Wisconsin Avenue, Bethesda, Maryland 20814.

Open: November 1, 8 a.m.–8:30 a.m.

Closed: November 1, 8:30 a.m. to adjournment.

Name of Committee: National Diabetes and Digestive and Kidney Diseases, Special Grants Review Committee, Subcommittee D.

Executive Secretary: Ann A. Hagan, Westwood Building, room 417A, National Institutes of Health, Bethesda, Maryland 20892, Phone: 301–496–7841.

Date of Meeting: October 19, 1990.

Place of Meeting: Bethesda Ramada Inn, 8400 Wisconsin Avenue, Bethesda, Maryland 20814.

Open: October 19, 8:30 a.m.–9 a.m.

Closed: October 19, 9 a.m. to adjournment.

Dated: September 24, 1990.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 90–23449 Filed 10–3–90; 8:45 am]

BILLING CODE 4140–01–M

National Institute of General Medical Sciences; Meetings

Pursuant to Public Law 92–463, notice is hereby given of the meetings of the committees of the National Institute of General Medical Sciences for November 1990.

These meetings will be open to the public to discuss administrative details relating to the committee business for approximately 1 hour at the beginning of the first session of the first day of the meeting. Attendance by the public will be limited to space available.

These meetings will be closed thereafter in accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, for the review, discussion, and evaluation of individual research training grant and research center grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Ann Dieffenbach, Public Information Officer, National Institute of General Medical Sciences, National Institutes of Health, Building 31, Room 4A52, Bethesda, Maryland 20892 (Telephone: 301–496–7301), will provide a summary of the meeting and a roster of committee members.

Substantive program information may be obtained from each executive secretary whose name, room number, and telephone number are listed below each committee.

Name of Committee: Minority Programs Review Committee.

Name of Subcommittee: Minority Access to Research Careers Review Subcommittee.

Executive Secretary: Dr. Norka Ruiz Bravo, Rm. 9A18, Westwood Building. Telephone: 301–496–7585.

Dates of Meeting: November 1–2.

Place of Meeting: Guest Quarters Hotel, 7335 Wisconsin Avenue, Bethesda, Maryland 20814.

Open: November 1, 8:30 a.m.–9:30 a.m.

Closed: November 1, 9:30 a.m.–5:00 p.m. November 2, 8:30 a.m.–adjournment.

Name of Committee: Genetic Basis of Disease Review Committee.

Executive Secretary: Dr. Arthur Zachary, Rm. 9A14, Westwood Building. Telephone: 301–496–7125.

Date of Meeting: November 5.

Place of Meeting: Holiday Inn, Bethesda, 8120 Wisconsin Avenue, Bethesda, Maryland 20814.

Open: November 5, 8:30 a.m.–9:30 a.m.

Closed: November 5, 9:30 a.m.–adjournment.

Name of Committee: Pharmacological Sciences Review Committee.

Executive Secretary: Dr. Rodney Ulane, Rm. 9A18, Westwood Building. Telephone: 301–496–4772.

Date of Meeting: November 9.

Place of Meeting: Building 31C, Conference Rm. 7, National Institutes of Health, Bethesda, Maryland.

Open: November 9, 8:30 a.m.–9:30 a.m.

Closed: November 9, 9:30 a.m.–adjournment.

Name of Committee: Cellular and Molecular Basis of Disease Review Committee.

Executive Secretary: Dr. Carole Latker, Rm. 9A10, Westwood Building. Telephone: 301–496–7125.

Dates of Meeting: November 13–14.

Place of Meeting: Guest Quarters Hotel, 7335 Wisconsin Avenue, Bethesda, Maryland 20814.

Open: November 13, 8:30 a.m.–9:30 a.m.

Closed: November 13, 9:30 a.m.–5:00 p.m. November 14, 8:30 a.m.–adjournment.

Name of Committee: Minority Programs Review Committee.

Name of Subcommittee: Minority Biomedical Research Support Subcommittee.

Executive Secretary: Dr. Mary Stephens, Rm. 9A13, Westwood Building. Telephone: 301–402–0635.

Dates of Meeting: November 15–16.

Place of Meeting: Conference Rm. 9, National Institutes of Health, Bethesda, Maryland 20892.

Open: November 15, 8:30 a.m.–9:30 a.m.

Closed: November 15, 9:30 a.m.–5:00 p.m. November 16, 8:30 a.m.–adjournment.

(Catalog of Federal Domestic Assistance Program No. 13–859, 13–862, 13–863, 13–880, National Institute of General Medical Sciences, National Institutes of Health)

Dated: September 24, 1990.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 90–23450 Filed 10–3–90; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Meeting of Board of Scientific Counselors

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Heart, Lung, and Blood Institute Board of Scientific Counselors, December 6 and 7, 1990, National Institutes of Health, 9000 Rockville Pike, Building 10, Room 7N214, Bethesda, Maryland 20892.

This meeting will be open to the public from 9 a.m. to 4 p.m. on December and from 9 a.m. to 3 p.m. on December 7 for discussion of the general trends in research relating to cardiovascular, pulmonary and certain hematologic diseases. Attendance by the public will be limited to space available.

In accordance with the provision set forth in section 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public from 3:00 p.m. to adjournment on December 7 for the review, discussion, and evaluation of individual programs and projects conducted by the National Institutes of Health, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20892, phone (301) 496–4236, will provide a summary of the meeting and a roster of the Board members.

Substantive program information may be obtained from Dr. Edward D. Korn, Executive Secretary and Director, Division of Intramural Research, NHLBI, NIH Building 10, Room 7N214, phone (301) 496–2116.

Dated: September 24, 1990.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 90–23451 Filed 10–3–90; 8:45 am]

BILLING CODE 4140–01–M

National Library of Medicine; Meeting of the Biomedical Library Review Committee

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the Biomedical Library Review Committee on November 8–9, 1990, convening at 8:30 a.m. in the Board Room of the

National Library of Medicine, Building 38, 8600 Rockville Pike, Bethesda, Maryland.

The meeting on November 8 will be open to the public from 8:30 to approximately 11 a.m. for the discussion of administrative reports and program developments. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C., and section 10(d) of Public Law 92–463, the meeting on November 8 will be closed to the public for review, discussion, and evaluation of individual grant applications from approximately 11 a.m. to 5 p.m., and on November 9 from 8:30 a.m. to adjournment. These applications and the discussion could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Roger W. Dahlen, Executive Secretary of the Committee, and Chief, Biomedical Information Support Branch, Extramural Programs, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, telephone number: 301–496–4221, will provide summaries of the meeting, rosters of the committee members, and other information pertaining to the meeting.

(Catalog of Federal Domestic Assistance Program No. 13.879—Medical Library Assistance, National Institutes of Health)

Dated: September 24, 1990.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 90–23452 Filed 10–3–90; 8:45 am]

BILLING CODE 4140–01–M

National Library of Medicine; Meeting of the Board of Scientific Counselors

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Library of Medicine, on October 25 and October 26, 1990, in the Board Room of the National Library of Medicine, Building 38, 8600 Rockville Pike, Bethesda, Maryland.

The meeting will be open to the public from 8:30 a.m. to 12:45 p.m. and from 1:45 to 4:45 p.m. on October 25 and from 8:30 a.m. to approximately 12 noon on October 26 for the review of research and development programs and preparation of reports of the Lister Hill National Center for Biomedical Communications. Attendance by the public will be limited to space available.

In accordance with provisions set forth in section 552b(c)(6), title 5, U.S.C., and section 10(d) of Public Law 92–463, the meeting will be closed to the public on October 25, from approximately 12:45 p.m. to 1:45 p.m. for the consideration of personnel qualifications and performance of individual investigators and similar items, the disclosure of which would constitute an unwarranted invasion of personal privacy.

The Executive Secretary, Dr. Daniel R. Masys, Director, Lister Hill National Center for Biomedical Communications, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, telephone (301) 496–4441, will furnish summaries of the meeting, rosters of committee members, and substantive program information.

Dated: September 24, 1990.

Betty J. Beveridge,

NIH Committee Management Officer, NIH.

[FR Doc. 90–23453 Filed 10–3–90; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N–90–3158]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Scott Jacobs, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Report Management Officer, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: September 27, 1990.

John T. Murphy,

Director, Information Policy and Management Division.

Proposal: Housing Development Grant Application Package.

Office: Housing.

Description of the Need for the Information and Its Proposed Use: These forms are used by grantees to update project data essential for preparation of the final HUD/Grantee Agreement. They are also a source document for collecting information to update automated information systems used for program management.

Form Number: HUD–90031 and 90031–A.

Respondents: State or Local Governments.

Frequency of Submission: Other.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD 90031 & 90021-A	200		1		4		800
Application	54		1		82		4,428

Total Estimated Burden Hours: 5,228.
Status: Extension.
Contact: Michael A. Levine, HUD, (202) 708-1142. Scott Jacobs, OMB, (202) 395-6880.

Dated: September 27, 1990.

[FR Doc. 90-23427 Filed 10-3-90; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM-040-00-4111-16]

Boundary Change, Texas

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of boundary change, Tulsa/Roswell districts in Texas.

SUMMARY: Notice is hereby given that Bureau of Land Management (BLM) responsibility for all of Texas is now under the jurisdiction of the Tulsa District Office (TDO) of the New Mexico State Office (NMSO). For the convenience of the public, this transfer combines the southwestern portion of Texas with the eastern and northern portions under one office. The transferred area currently has no producing leases and no inspection and enforcement (I&E) work. BLM responsibility in Texas is limited to the subsurface. An estimated 10% of the workload in Texas has now been incorporated into the approximately 90% for which TDO was previously responsible. The transferred area includes the following 39 counties: Andrews, Borden, Brewster, Coke, Crane, Crockett, Culberson, Dawson, Ector, Edwards, El Paso, Fisher, Gaines, Glasscock, Howard, Hudspeth, Irion, Jeff Davis, Kinney, Loving, Martin, Maverick, Midland, Mitchell, Nolan, Pecos, Presidio, Reagan, Reeves, Schleicher, Scurry, Sterling, Sutton, Terrell, Tom Green, Upton, Val Verde, Ward, Winkler.

DATES: This boundary change was approved March 16, 1990, by the Deputy Director of BLM, and took effect immediately.

FOR FURTHER INFORMATION CONTACT: Jim Sims, District Manager, Tulsa District Office, BLM, 9522-H East 47th Place, Tulsa, Oklahoma 74145, Phone: (918) 581-6480.

Dated: September 26, 1990.

Larry Woodard,
State Director.

[FR Doc. 90-23487 Filed 10-3-90; 8:45 am]

BILLING CODE 4310-FB-M

[WO-150-00-4830-11]

National Public Lands Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting of the National Public Lands Advisory Council.

SUMMARY: Notice is hereby given that the National Public Lands Advisory Council will meet November 1-3, 1990, at the Plaza-Suite Hotel, 4255 South Paradise Road, Las Vegas, Nevada 89109. The meeting hours will be 8 a.m. to 4 p.m. on Friday, the 2nd, and 8 a.m. to 12 p.m. on Saturday, the 3rd. On Thursday, November 1st, Council members will participate in a field tour of BLM-managed lands at the Red Rock Conservation Area. The proposed agenda for the meeting is:

Friday, November 1

Morning: Opening remarks by National Public Lands Advisory Council Chairman Dave Delcour; Cy Jamison, Director, Bureau of Land Management; and, Acting State Director, BLM-Nevada, Fred Wolf. Topics for morning discussion will include: BLM's Management Plan on the Spotted Owl/Timber issue; an overview/ update of the Wild Horse & Burro Program; and Hazardous Waste Disposal.

Afternoon: The Public Statement period; followed by a briefing on Land Use in the Las Vegas area.

Saturday, November 3

Council old and new business. The Council will then break into three task Force Groups to continue their deliberations on advising the Bureau of Land Management with regards to: Recreation; Research; and, the possibility of the Bureau of Land Management having a Multiple Use Foundation.

All meetings of the Council are open to the public. Opportunity will be given for members of the public to make oral statements to the Council, beginning at 1:00 p.m. on Friday, November 2nd. Speakers should address specific national public lands issues on the meeting agenda and are encouraged to submit a copy of their written statements prior to oral delivery. Please send written comments by October 15 to the Bureau of Land Management's Nevada State Office at the address listed below. Depending on the number of people who wish to address the Council, it may be necessary to limt the length of oral presentations.

DATES: November 2 and 3—Council Meeting. November 2—Public Statements.

ADDRESSES: Copies of Public statements should be mailed by October 15 to: Ms. Carol Hadley, Nevada State Office, Bureau of Land Management, P.O. Box 12000, Reno, Nevada 89520-0006.

FOR FURTHER INFORMATION CONTACT: Nan Morrison, Washington, D.C. Office, BLM, telephone (202) 208-5101; or Carol Hadley, Nevada State Office, BLM, telephone (702)-785-6590.

SUPPLEMENTARY INFORMATION: The Council advises the Secretary of the Interior through the Director, Bureau of Land Management, regarding policies and programs of a national scope related to public lands and resources under the jurisdiction of BLM.

Date Signed: September 28, 1990.

Cy Jamison,
Director

[FR Doc. 90-23459 Filed 10-3-90; 8:45 am]

BILLING CODE 4310-84-M

[OR-100-01-6310-02; GP1-002]

Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The District Advisory Council for the Bureau of Land Management, Roseburg District will meet November 2, 1990, beginning at 8:30 a.m. in the Roseburg District Office Auditorium. On the agenda are a general update on District activities and programs and a discussion of new forestry concepts.

ADDRESSES: Bureau of Land Management, Roseburg District, 777 NW Garden Valley Blvd., Roseburg, OR 97470.

FOR FURTHER INFORMATION CONTACT: Mel Ingeroi, Public Affairs Specialist, (503)672-4491.

SUPPLEMENTARY INFORMATION: The meeting is open to the public, and a public comment period will be provided at 10:30 a.m. Written statements for the Council can be mailed to the District Manager prior to the meeting or presented to the Council during the meeting. Summary minutes will be available for public review within 30 days of the meeting.

Dated: September 24, 1990.

Richard G. Burch,

Acting District Manager.

[FR Doc. 90-23477 Filed 10-3-90; 8:45 am]

BILLING CODE 4310-33-M

[AZ-040-01-4410-01]

Joint Meeting for the Safford District Advisory Council and San Pedro Riparian National Conservation Area Advisory Committee

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: The Bureau of Land Management (BLM), Safford District announces a forthcoming joint meeting of the Safford District Advisory Council and the San Pedro Riparian National Conservation Area Advisory Committee.

DATES: Wednesday, November 7, 1990, 10 a.m.

ADDRESSES: San Pedro House, Highway 90, Six Miles East of Sierra Vista.

SUPPLEMENTARY INFORMATION: This meeting is held in accordance with Public Law 92-463 and 94-579 and 43 CFR part 1784. The agenda for the meeting will include:

1. Update on the Safford District Resource Management Plan (RMP)
2. Report from Advisory Council Subcommittee on AZ Wilderness Bill Implementation Plan
3. Management Update
4. Tour of Murry Springs Paleontological Site
5. Business Meeting for Council and San Pedro Committee

The meeting will be open to the public. Interested persons may make oral statements to the Council between 11 am. and 12 noon. A written copy of the oral statement may be required to be provided at the conclusion of the presentation. Written statements may also be filed for the Council's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 425 E. 4th St., Safford, Arizona 85546, by 4:15 pm., Tuesday, November 6, 1990.

Summary minutes of the meeting will be maintained in the District Office and will be available for public inspection and reproduction (during regular business hours) within thirty (30) days following the meeting.

Dated: September 20, 1990.

Margaret Jensen,

Acting District Manager.

[FR Doc. 90-23486 Filed 10-3-90; 8:45 am]

BILLING CODE 4310-32-M

[MT-070-00-4050-91-43H; MT M78651]

Montana; Realty Action; Recreation and Public Purposes (R&PP) Act Lease; Last Chance Handgunners

AGENCY: Interior, Bureau of Land Management, Butte District, Interior.

SUMMARY: This notice amends the original Notice of Realty Action for MT M78651 published on August 23, 1990 (Vol. 55, No. 164, page 34622. The lands described in that Notice have been examined and found suitable for classification for lease to Last Chance Handgunners pursuant to the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et. seq.*).

Dated: September 25, 1990.

Merle N. Good,

Headwaters Area Manager.

[FR Doc. 90-23478 Filed 10-3-90; 8:45 am]

BILLING CODE 4310-DN-M

[WY-010-00-4212-14; W-94096]

Realty Action; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action; sale of public land in Hot Springs and Washakie Counties, Wyoming.

SUMMARY: The following lands have been examined and identified as suitable for disposal under section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750; 43 U.S.C. 1713). The proposed sale will be a direct sale of the surface estate of three individual parcels to the identified governmental entities, at not less than the appraised fair market value. The proposed Action will provide for the sale of all parcels on the sale date, but the sale of individual parcels may be delayed until all requirements have been met. The lands are legally described as follows:

Sixth Principal Meridian

Parcel Number 1: T. 46 N., R. 99 W.
Sec. 24, lot 4 (2.5 acres)
Parcel Number 2: T. 44 N., R. 98 W.
Sec. 23: E½NE¼NE¼NE¼, N½NE¼SE¼NE¼NE¼ (6.25 acres)
Sec. 24: W½NW¼NW¼NW¼NW¼, NW¼SW¼NW¼NW¼NW¼ (1.875 acres)
Parcel Number 4: T. 47 N., R. 93 W.
Sec. 22: E½NE¼ (80.0 acres)
Sec. 23: SW¼NW¼ (40.0 acres).

The above land aggregates 130.625 acres more or less.

FOR FURTHER INFORMATION CONTACT: Leonard Larsen, Realty Specialist, Bureau of Land Management, Grass Creek Resources Area, P.O. Box 119, Worland, Wyoming 82401 (307) 347-9871.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management proposes to sell the surface estate, reserving all the minerals to the United States. The primary purpose in conveying the subject lands out of public ownership is to meet the public need identified by local governmental entities. Parcels number 1 and number 2, currently under lease for school facilities, will be offered to the Hot Springs County School District Number 1. Parcel number 4 will be offered to the Washakie County Solid Waste Disposal District Number 1 for county landfill purposes.

The proposed sale is consistent with the Grass Creek Resource Area Management Framework Plan and will serve important public objectives. The land contains no known public values. The planning document and environmental assessment covering the proposed sale will be available for review at the Bureau of Land Management, Worland District Office, 101 South 23rd Street, Worland, Wyoming.

Coveyance of the public land will be subject to:

1. A right-of-way for ditches and canals constructed by the authority of the United States Act of August 30, 1890 (43 U.S.C. 945).

2. All mineral deposits shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals, and subject to:

Parcel Number 1: 1. C-044124, Oil and Gas Lease.

Parcel Number 2: 1. Wyoming State Highway 170, Right-of-Way;

2. W-58063, Tri-County Telephone Right-of-Way;

3. W-81732, Hot Spring REA, Right-of-Way;

4. W-81720, Hot Springs County School District Number 1, Right-of-Way; and

5. C-058729, Oil and Gas Lease.

Parcel Number 4: 1. W–044926, Pacific Power Right-of-Way; and

2. W–95009, W–98248, and W–112472, Oil and Gas Leases.

The public land described above shall be segregated from all forms of appropriation under the public land laws, including the mining laws, upon publication of this notice in the Federal Register. The segregative effect will end upon issuance of the patent or 270 days from the date of the publication, whichever comes first.

For a period of forty-five (45) days from the date of issuance of this notice, interested parties may submit comments to the Bureau of Land Management, District Manager, Worland, P.O. Box 119, Worland, Wyoming 82401. Any adverse comments will be evaluated by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections this proposed realty action will become final.

Dated: September 26, 1990.

Joseph T. Vessels,

Area Manager.

[FR Doc. 90–23485 Filed 10–3–90; 8:45 am]

BILLING CODE 4310–22–M

[AZ–930–00–4214–11; A–12973]

Proposed Modification and Continuation of Withdrawal; Arizona

September 26, 1990.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, proposes to modify and continue for 20 years Secetarial Order of October 23, 1907, which withdrew 120.00 acres in the Coconino National Forest for use as the Blue Ridge Campground, formerly the Moqui Ranger Station (1907) and subsequently renamed the Blue Ridge Administrative Site (1915).

The Forest Service proposes to continue the withdrawal for campground purposes for 20 years, and does not anticipate any changes in land use. The land will remain closed to operation of the mining laws only.

DATES: Comments to this notice should be received by January 2, 1991.

ADDRESSES: Comments should be addressed to the Arizona State Director, BLM, P.O. Box 16563, Phoenix, Arizona 85011.

FOR FURTHER INFORMATION CONTACT: John Mezes, BLM, Arizona State Office, P.O. Box 16563, Phoenix, Arizona 85011, 602 640–5509.

SUPPLEMENTARY INFORMATION: The Forest Service proposes that Secretarial Order dated October 23, 1907, withdrawing the lands from all forms of use for an indefinite period of time, be modified and continued for a period of 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714, insofar as it affects the following described land in the State of Arizona. Additionally, it is proposed that the authorized land-use change from administrative site purposes to that of campground purposes.

Gila and Salt River Meridian

T. 14 N., R. 11 E.,
Sec. 21, N½NW¼, SW¼NW¼.
The area described contains 120.00 acres in Coconino County.

The purpose of the withdrawal is to protect a 10-unit campground valued at $15,000 from prospecting and possible disturbance caused by mining operations. For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with this proposed action may present their views in writing to this office.

The authorized officer of the BLM will undertake such investigation as is necessary to determine the existing and potential demand for the land and its resources.

A report will be prepared for consideration to determine whether or not the withdrawal will be modified and continued and, if so, for how long. Notice of a final determination will be published in the **Federal Register.** The existing withdrawal will continue until such final determination is made.

Phillip D. Moreland,

Acting Deputy State Director, Division of Lands and Renewable Resources.

[FR Doc. 90–23479 Filed 10–3–90; 8:45 am]

BILLING CODE 4310–32–M

[AZ–930–00–4214–11; A–12997]

Proposed Modification and Continuation of Withdrawal; Arizona

September 26, 1990.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, proposes to modify and continue for 20 years a portion of Secretarial Order of October 26, 1906, as amended. This order withdrew lands in the Kaibab and Coconino National Forests; however, this notice pertains only to the land located within the Kaibab National Forest. Another notice will be published for the land located within the Coconino National Forest.

The lands were withdrawn for ranger station and administrative site purposes. With the exception of 30 acres of the Camp Clover administrative site, the lands continue to be utilized for such purposes. It is anticipated, that there will be no additional changes in land-use. The Forest Service proposes that the lands withdrawn for the Spring Valley Ranger Station No. 4 and the Camp Clover Administrative Site No. 13 continue to be segregated from operation under the mining laws.

DATES: Comments to this notice should be received on or before January 2, 1991.

ADDRESSES: Comments should be addressed to the Arizona State Director, BLM, P.O. Box 16563, Phoenix, Arizona 85011.

FOR FURTHER INFORMATION CONTACT: John Mezes, BLM, Arizona State Office, P.O. Box 16563, Phoenix, Arizona 85011, (602) 640–5509.

SUPPLEMENTARY INFORMATION: The Forest Service proposes that Secretarial Order of October 26, 1906, as amended be modified and continued for 20 years as it pertains to 110 acres of the Spring Valley Ranger Station No. 4 and 190 acres of the Camp Clover Administrative Site No. 13. Both sites contain improvements valued at $8,000 and $116,000, respectively. The order will be terminated on 30 acres of the Camp Clover Administrative Site. Actions are taken pursuant to Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714, insofar as it affects the following described lands in the State of Arizona:

Gila and Salt River Meridian

Continue.
T. 23 N., R. 4 E.,
Sec. 22, E½SW¼;
Sec. 27, N½NE¼NW¼, NE¼NW¼ NW¼—110.00 acres.
T. 22 N., R. 2 E.,
Sec. 31, E½SE¼, E½SW¼SE¼, E½W½ SW¼SE¼;
Sec. 32, W½SW¼—190.00 acres.
Terminate.
T. 22 N., R. 2 E.,
Sec. 31, W½W½SW¼SE¼—10.00 acres.
Sec. 32, S½SW¼NW¼—20.00 acres.

The areas described contain 300 acres on which the withdrawal will be continued and 30 acres on which it will be terminated, all lands are located in Coconino County.

The purpose of the withdrawal is for the administration and protection of a ranger station and an administrative site. Continuation of the secretarial order will continue closure of the lands

to operations under the mining laws only and will impose a 20-year life on the withdrawal unless extended. Termination of the withdrawal on the subject 30 acres is simply a record clearing action as the land has already been transferred into private ownership via a Forest Service exchange. For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with this proposed action may present their views in writing to this office.

The authorized officer of the Bureau of Land Management will undertake such investigation, as is necessary, to determine the existing and potential demand for the land and its resources. A report will be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be modified and continued and, if so, for how long. Notice of the final determination will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

Phillip D. Moreland,

Acting Deputy State Director, Division of Lands and Renewable Resources.

[FR Doc. 90-23480 Filed 10-3-90; 8:45 am]

BILLING CODE 4310-32-M

[OR-943-01-4214-11; GP1-001; OR-22213(WASH), OR-22370(WASH)]

Proposed Continuation of Withdrawals, Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Interior, Bureau of Reclamation proposes that the two separate land withdrawals continue for an additional 20 years and requests that the lands involved remain closed to surface entry and mining.

FOR FURTHER INFORMATION CONTACT: Linda Sullivan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503-280-7171.

The Bureau of Reclamation proposes that the following identified land withdrawals be continued for a period of 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714. The following described lands within the Yakima project are involved:

1. OR-22213(WASH), Secretarial Order dated January 15, 1906, 40 acres located in Sec. 10, T. 14 N., R. 16 E., W.M., in Yakima County, approximately 19 miles northwest of Yakima.

2. OR-22370(WASH), Secretarial Order dated August 16, 1907, approximately 6,067 acres located in Secs. 24, 25, and 36, T. 16 N., R. 11 E., and Secs. 13, 14, 15, 20, 21, 22, 23, 24, 26, 27, 28, 29, 32, 33, 34, and 35, T. 16 N., R. 12 E., in Yakima County, approximately 29 miles northwest of Naches.

The withdrawals currently segregate the lands from operation of the public land laws generally, including the mining laws. The Bureau of Reclamation requests no changes in the purpose or segregative effect of the withdrawals.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions or objections in connection with the proposed withdrawal continuations may present their views in writing to the undersigned officer at the address specified above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the lands and their resources. A report will also be prepared for consideration by the Secretary of the Interior, the President and Congress, who will determine whether or not the withdrawals will be continued and if so, for how long. The final determination on the continuation of the withdrawals will be published in the Federal Register. The existing withdrawals will continue until such final determination is made.

Dated: September 26, 1990.

Robert E. Mollohan,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 90-23481 Filed 10-3-90; 8:45 am]

BILLING CODE 4310-33-M

[OR-943-01-4214-10; GP1-003; OR-7964(WASH)]

Partial Termination of Proposed Withdrawal and Reservation of Land; Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, has cancelled its application in part to withdraw certain land for protection of the Wolf Creek Research Natural Area. This action will open 7.1 acres to mining. The land has been and remains open to mineral leasing.

FOR FURTHER INFORMATION CONTACT: Linda Sullivan, BLM, Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503-280-7171.

SUPPLEMENTARY INFORMATION: Notice of U.S. Department of Agriculture, Forest Service application OR-7964(WASH) for withdrawal and reservation of land was published as FR Doc. 77-6629 of the issue dated March 7, 1977. The purpose of the proposed withdrawal is to protect Wolf Creek Research Natural Area located five miles west of Winthrop, Washington. The applicant agency has determined that a portion of the proposed withdrawal is no longer needed and has cancelled the application as to the following described land:

Willamette Meridian

Okanogan National Forest

T. 34 N., R. 20 E., unsurveyed,
Sec. 1, that portion of the N½ located northerly of the centerline of Virginia Ridge Road No. 3619.

The area described contains approximately 7.1 acres in Okanogan County, Washington.

Pursuant to the regulations contained in 43 CFR 2310.2-1(c), at 8:30 a.m., on November 5, 1990, subject to valid existing rights, the provisions of other existing withdrawals, and the requirements of applicable law, the land described above will be opened to location and entry under the United States mining laws. Appropriation of land described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determination in local courts.

The land remaining in withdrawal application OR-7964(WASH) is amended to read as follows:

Willamette Meridian

Okanogan National Forest

T 34. N., R. 20 E., unsurveyed,
Sec. 1, that portion of the N½ described as follows: Beginning at the section corner common to sections 35 and 36 on the south boundary of T. 35 N., R. 20 E., thence S. 0°08'51" E., a distance of 1,238 feet; thence generally along the left bank of Wolf Creek bearing S. 60°00'00" E., a distance of 2,185 feet; thence N. 82°19'09" E., a distance of 1,415.73 feet; thence

along a line passing through Corner No. 3 and terminating at Corner No. 2 of H.E.S. No. 217, said line bearing N. 0°17'12" W., a distance of 2,150 feet; thence along a line on the south boundary of section 36, T. 35 N., R. 20 E., bearing S. 89°51'50" W., a distance of 649.47 feet to the south one quarter section corner of said section 36; thence continuing along the south boundary of said section 36 on a bearing of S. 89°56'00" W., a distance of 177 feet to the centerline of Virginia Ridge Road No. 3619; thence along the centerline of said road bearing S. 34°05'00" W., a distance of 330 feet; thence N. 85°15'00" W., a distance of 516 feet; thence S. 83°15'00" W., a distance of 243 feet; thence N. 77°20'00" W., a distance of 198 feet; thence N. 56°40'00" W., a distance of 165 feet; thence N. 36°05'00" W., a distance of 153 feet; thence S. 85°00'00" W., a distance of 107 feet; thence N. 64°35'00" W., a distance of 20.98 feet to a point intersecting the south boundary of said section 36; thence S. 89°56'00" W., a distance of 974.63 feet along the south boundary of said section 36 to the point of beginning.

The area described contains approximately 142.9 acres in Okanogan County, Washington.

Dated: September 26, 1990.

Robert E. Mollohan,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 90-23482 Filed 10-3-90; 8:45 am]

BILLING CODE 4310-33-M

Fish and Wildlife Service

Availability of Draft Revised Recovery Plan for the Grizzly Bear (Ursus arctos horribilis) for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability and public comment period.

SUMMARY: The U.S. Fish and Wildlife Service announces the availability for public review of the draft revised recovery plan for grizzly bear (*Ursus arctos horribilis*). This threatened species occurs in several populations in the lower 48 states. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before December 3, 1990 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting: Grizzly Bear Recovery Coordinator, U.S. Fish and Wildlife Service, NS 312, University of Montana, Missoula, Montana 59812, 406/329-3223 or (FTS) 585-3223. Written comments and materials regarding this plan should be sent to the Recovery Coordinator at the Missoula, Montana, address given above. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address for the duration of the comment period.

FOR FURTHER INFORMATION CONTACT: Dr. Christopher Servheen, at the Missoula, Montana address (406) 329-3223; FTS 585-3223.

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for recovery levels for downlisting or delisting them, and provide initial estimates of time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended [16 U.S.C. 1531 *et seq.*] requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies also will take these comments into account in the course of implementing approved recovery plans.

The grizzly bear was listed under the Act as a threatened species in the 48 conterminous States on July 28, 1975, (40 FR 31734) due to current and potential threats to the species' populations and habitat from human activities. The plan addresses grizzly bear recovery in seven ecosystems. Populations of grizzly bear are known in five of the seven ecosystems—the Yellowstone ecosystem population in Wyoming, Idaho, and Montana; the Cabinet-Yaak ecosystem in Idaho and Montana; the Northern Continential Divide ecosystem in Montana; the Selikirk ecosystem in Washington and Idaho; and the North Cascades ecosystem in Washington. As yet, there is no firm evidence of grizzly bear in the Bitterroot ecosystem in Montana and Idaho, or the San Juan ecosystem in Colorado. Threats to the grizzly bear population come from habitat modification caused by human activities such as logging, recreational development, subdivisions, and mining and energy development, and from direct human/bear conflicts as a result of interactions with recreational use, livestock operations, highway and railroad corridors, illegal mortality, etc.

Recovery efforts have focused on protecting the species' populations and habitat from habitat-destroying activities through section 7 and section 9 of the Act and research on bear biology and habitat needs. Recovery criteria have been established for four of the ecosystems [Yellowstone, Cabinet-Yaak, Northern Continental Divide, and Selkirk). Further evaluation of the other ecosystems (North Cascades, Bitterroot and the San Juan) will be needed to determine recovery critiera. Delisting can be achieved independently for each of the grizzly bear populations as there are no known connections between any of the populations.

Public Comments Solicited

The Service solicits written comments on the Grizzly Bear Recovery Plan revision described above. All comments received by the date specified above will be considered prior to approval of the revised plan.

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: September 28, 1990.

Wilbur N. Ladd, Jr.,

Acting Regional Director.

[FR Doc. 90-23507 Filed 10-3-90; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Training and Qualifications of Personnel in Well-Control Training

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of approved well-control training schools.

SUMMARY: As published in the Federal Register on December 21, 1978 (43 FR 59551) the Minerals Management Service (MMS) is providing, for public information, a current list of MMS approved well-control schools.

FOR FURTHER INFORMATION CONTACT: Mr. Mario Rivero, Minerals Management Service, Mail Stop 4800, 381 Elden

Street, Herndon, Virginia, 22070–4817, telephone (703) 787–1584.

SUPPLEMENTARY INFORMATION: On January 19, 1982, the MMS was established under Secretarial Order No. 3071. The **Federal Register** Notice of February 19, 1982 (43 FR 7508) published the MMSS–OCS–T 1 Training Standard, "Training and Qualifications of Personnel in Well-Control Equipment and Techniques for Drilling on Offshore I ocations," Second Edition. The following is a list of MMS approved well-control schools:

MMS Approved Well-Control Schools

Legend

Job Classification:
RH—Rotary Helper
DM—Derrickman
DR—Driller
TP—Toolpusher
OR—Operator's Representative

Blowout—Preventer Stack Type

SUR—Surface BOP Stack
SUB—Subsea BOP Stack

It is anticipated that periodic Notices of this type will be published in the future on an as-needed basis.

Dated: September 27, 1990.

Ed Cassidy,

Deputy Director, Minerals Management Service.

BASIC SCHOOLS

No.	School Name	Type	Class	Approved/Expires	Comment
1	Alaska Vocational Technical Center	SUR SUB	DR TP OR	04/23/88 to 04/23/92	
2	Arco Oil and Gas Company	SUR SUB	TP OR	12/10/88 to 12/10/92*	
3	Basic Research and Training, Incorporated	SUR SUB	DR TP OR	11/09/88 to 11/09/92	
4	Baroid Corporation	SUR SUB	DR TP OR	07/02/87 to 07/02/91	
5	BP Exploration Inc	SUR SUB	DR TP OR	02/10/89 to 02/10/93	
6	Chevron Services Company	SUR SUB	OR	06/19/87 to 06/19/94	
7	Cities Service Company	SUR SUB	DR TP OR	06/19/87 to 06/19/91	
8	Conoco, Incorporated	SUR SUB	OR	11/01/90 to 11/01/94*	
9	Eastern New Mexico University	SUR SUB	DR TP OR	08/19/89 to 08/19/93	
10	Exxon Company U.S.A	SUR SUB	DR TP OR	09/18/90 to 09/18/94	
11	Global Marine Drilling Company	SUR SUB	DR TP OR	04/21/90 to 04/21/94*	
12	Grace, Shursen, Moore and Associates	SUR SUB	DR TP OR	10/13/88 to 10/13/92	
13	Houston Community College	SUR SUB	DR TP OR	09/18/87 to 09/18/91	
14	International Drilling School	SUR SUB	DR TP OR	11/10/90 to 11/10/94*	
15	Loffland Brothers Company	SUR	DR TP OR	01/24/88 to 01/24/92*	
16	Louisiana State University	SUR SUB	DR TP OR	11/10/86 to 11/10/90	
17	M. I. Drilling Fluids Company	SUR SUB	DR TP OR	08/23/90 to 08/23/94*	
18	Milpark Drilling Fluids	SUR SUB	DR TP OR	01/18/87 to 01/18/91*	
19	Murchison Drilling Schools	SUR SUB	DR TP OR	05/29/87 to 05/29/91	
20	Ocean Drilling & Exploration Company (ODECO)	SUR SUB	DR TP OR	05/29/87 to 05/29/91	
21	Odessa College	SUR SUB	DR TP OR	05/11/88 to 05/11/92	
22	Oilfield Training Consultants	SUR SUB	DR TP OR	06/13/88 to 06/13/92	
23	Oilfield Training Seminars Incorporated	SUR SUB	DR TP OR	07/30/87 to 07/30/91	
24	Oklahoma Petroleum Training Corporation	SUR SUB	DR TP OR	07/31/88 to 07/31/92	
25	Parker Drilling Company	SUR SUB	DR TP OR	10/29/88 to 10/29/92	
26	Pennsylvania State University	SUR SUB	DR TP OR	09/03/89 to 09/03/93**	
27	Pool Offshore Company	SUR SUB	DR TP OR	03/19/87 to 03/19/91	
28	Prentic Training Company	SUR SUB	DR TP OR	01/15/89 to 01/15/93	
29	Randy Smith Well Control Schools	SUR SUB	DR TP OR	01/04/89 to 01/04/93	
30	Reading & Bates Drilling Company	SUR SUB	DR TP OR	02/05/90 to 02/05/94	
31	Rike Service, Incorporated	SUR SUB	DR TP OR	01/16/87 to 01/16/91	
32	Santa Fe Drilling Company	SUR SUB	DR TP OR	05/29/88 to 05/29/92*	
33	Sedco Forex	SUR SUB	DR TP OR	01/18/89 to 01/18/93	
34	Shell Oil Company	SUR SUB	DR TP OR	07/07/87 to 07/07/91	
35	Texaco	SUR SUB	DR TP OR	02/15/87 to 02/15/91	
36	The Training Company Incorporated	SUR SUB	DR TP OR	01/06/87 to 01/06/91	
37	Triton Engineering Services	SUR SUB	OR	03/11/87 to 03/11/91	
38	University of Houston at Victoria	SUR SUB	DR TP OR	10/16/89 to 10/16/93	
39	University of Oklahoma	SUR SUB	DR TP OR	07/10/87 to 07/10/91	
40	University of Southwestern Louisiana	SUR SUB	DR TP OR	11/17/87 to 11/17/91	
41	University of Texas (Petex)	SUR SUB	DR TP OR	05/08/87 to 05/08/91	
42	Unocal	SUR SUB	DR TP OR	09/16/88 to 09/16/92	
43	Ventura College	SUR SUB	DR TP OR	03/15/87 to 03/15/91	
44	Well Control School	SUR SUB	DR TP OR	11/09/88 to 11/09/92	
45	Westec-Taft College	SUR SUB	DR TP OR	04/12/87 to 04/12/91	
46	Western Oceanic, Incorporated	SUR SUB	DR TP OR	05/01/89 to 05/01/93	
47	Western Well Control School	SUR	DR TP OR	05/30/89 to 05/30/93	
48	Uintah Basin Area Vocational Center	SUR SUB	DR TP OR	05/11/90 to 05/11/94*	
	The following school's Basic well-control programs have expired:				
	Operators, Inc	SUR SUB	DR TP OR	03/01/89	Expired
	Cudd Pressure Control, Incorporated	SUR SUB	DR TP OR	04/29/85 to 04/29/89	Expired
	Dixilyn-Field Drilling Company	SUR SUB	DR TP OR	04/30/85 to 04/30/89	Expired
	Preston L. Moore, Incorporated	SUR SUB	DR TP OR	08/01/89	Expired
	Imco Services	SUR SUB	DR TP OR	08/31/89	Expired
	Colorado Northwestern Community College	SUR SUB	DR TP OR	09/29/89	Expired
	Northwestern Michigan College	SUR SUB	DR TP OR	09/29/89	Expired
	Diamond M. Company	SUR SUB	DR TP OR	04/17/90	Expired

Comments:
*=approval pending the results of onsite evaluation.
**=subsea approval pending the results of onsite evaluation.

ROTARY HELPER (RH)/DERRICKMAN (DM) SCHOOLS

No.	School name	Class	Approved
1	Alaska United Drilling Company	RH DM	10/28/83
2	Alaska Vocational Technical Center	RH DM	10-21-83
3	Anglo Alaska/Nabors Alaska	RH DM	01/7/82
4	Atlantic Pacific Marine Corporation	RH DM	12/11/79
5	Atwood Group, Incorporated	RH DM	08/08/79
6	Atwood Oceanics, Incorporated	RH DM	09/07/79
7	Bailey-Shannon Drilling	RH DM	11/16/81
8	Basic Research and Training, Incorporated	RH DM	08/09/82
9	Bokenkamp Drilling Company	RH DM	09/13/79
10	Booker Drilling	RH DM	01/10/80
11	Broughton Drilling	RH DM	01/16/80
12	Cactus International	RH DM	12/10/79
13	Canadian Marine Drilling Ltd.	RH DM	06/11/85
14	Challenger Drilling	RH DM	12/14/79
15	Chiles Drilling Company	RH DM	05/14/79
16	Circle Bar Drilling	RH DM	01/24/80
17	Cyclops Drilling	RH DM	11/28/79
18	Dan-Tex International	RH DM	02/29/80
19	Diamond M. Company	RH DM	03/01/79
20	Dolphin-Titan International	RH DM	05/07/85
21	Dual Offshore Company	RH DM	12/06/79
22	Flour Drilling Services Inc., Louisiana	RH DM	02/08/80
23	Flour Drilling Services Inc., California	RH DM	06/07/84
24	Global Marine Drilling Company	RH DM	03/06/79
25	Goldrus Marine Drilling	RH DM	10/28/80
26	Griffin-Alexander Drilling	RH DM	08/28/80
27	Houston Offshore	RH DM	08/14/79
28	Houtech Energy	RH DM	05/07/85
29	Huthance Drilling Company	RH DM	03/06/79
30	J.F.P. Drilling	RH DM	07/02/80
31	Keyes Offshore	RH DM	11/01/79
32	Loffland Brothers Company	RH DM	01/24/80
33	Marine Drilling Company	RH DM	03/20/79
34	Mayronne Company	RH DM	10/05/79
35	Moran Drilling Corporation	RH DM	03/25/80
36	Mudtech	RH DM	11/07/79
37	Nicklos Drilling	RH DM	10/30/79
38	Noble Drilling	RH DM	01/27/86
39	Ocean Drilling & Exploration Company	RH DM	10/16/79
40	Oilfield Training Seminars	RH DM	03/07/85
41	Parker Drilling Company	RH DM	07/02/84
42	Penrod Drilling	RH DM	07/18/79
43	Phoenix Seadrill	RH DM	09/25/79
44	Pool Offshore Company	RH DM	11/20/79
45	Prentic Training Company	RH DM	05/29/85
46	Randy Smith Well Control Schools	RH DM	07/25/89
47	Reading & Bates Drilling Company	RH DM	05/19/78
48	Rowan Companies	RH DM	08/10/78
49	Salen Offshore Company	RH DM	03/20/79
50	Santa Fe Drilling Company	RH DM	10/17/79
51	Savage Drilling	RH DM	11/02/82
52	Scan Drilling Company	RH DM	07/25/79
53	Sea Drilling	RH DM	11/28/79
54	See, Inc	RH DM	08/22/79
55	Sedco Forex	RH DM	06/11/82
56	Shell Oil Company	RH DM	07/07/87
57	South Texas Offshore Drilling	RH DM	01/27/82
58	The Offshore Company	RH DM	06/16/79
59	Transworld Drilling	RH DM	04/11/79
60	Ventura College	RH DM	03/06/84
61	Well Control School	RH DM	09/05/84
62	Western Oceanic, Incorporated	RH DM	03/01/79
63	Zapata Offshore Company	RH DM	09/22/78

REFRESHER SCHOOLS

No.	SCHOOL NAME	TYPE	CLASS	Approved/Expires	Comment
1	Alaska Vocational Technical Center	SUR SUB	DR TP OR	04/23/88 to 04/23/92	
2	Amoco Production Company	SUR SUB	OR	04/18/88 to 04/18/92	
3	Arco Oil and Gas Company	SUR SUB	TP OR	12/10/88 to 12/10/92*	
4	Basic Research and Training Incorporated	SUR SUB	DR TP OR	11/09/88 to 11/09/92	
5	Baroid Corporation	SUR SUB	DR TP OR	07/02/87 to 07/02/91	
6	BP Exploration Inc.	SUR SUB	DR TP OR	02/10/89 to 02/10/93	
7	Chevron Services Company	SUR SUB	OR	02/10/90 to 02/10/94	
8	Cities Service Company	SUR SUB	DR TP OR	06/19/87 to 06/19/91	
9	Conoco, Incorporated	SUR SUB	OR	11/01/90 to 11/01/94*	
10	Eastern New Mexico University	SUR SUB	DR TP OR	08/19/89 to 08/19/93	

REFRESHER SCHOOLS—Continued

No.	SCHOOL NAME	TYPE	CLASS	Approved/Expires	Comment
11	Exxon Company U.S.A	SUR SUB	DR TP OR	04/21/90 to 04/21/94	
12	Global Marine Drilling Company	SUR SUB	DR TP OR	04/21/90 to 04/21/94*	
13	Grace, Shursen, Moore and Associates	SUR SUB	DR TP OR	10/13/88 to 10/13/92	
14	Houston Community College	SUR SUB	DR TP OR	09/18/87 to 09/18/91	
15	International Drilling Schools	SUR SUB	DR TP OR	11/10/90 to 11/10/94*	
16	Loffland Brothers Company	SUR	DR TP OR	01/24/88 to 01/24/92	
17	Louisiana State University	SUR SUB	DR TP OR	11/10/86 to 11/10/90	
18	M. I. Drilling Fluids Company	SUR SUB	DR TP OR	08/23/90 to 08/23/94*	
19	Milpark Drilling Fluids	SUR SUB	DR TP OR	01/18/87 to 01/18/91	
20	Murchison Drilling Schools	SUR SUB	DR TP OR	05/29/87 to 05/29/91	
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27	Pennsylvania State University	SUR SUB	DR TP OR	09/03/89 to 09/03/93**	
28	Pool Offshore Company	SUR SUB	DR TP OR	03/19/87 to 03/19/91	
29	Prentice Training Company	SUR SUB	DR TP OR	01/15/89 to 01/15/93	
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34	Sedco Forex	SUR SUB	DR TP OR	01/18/89 to 01/18/93	
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36	Texaco	SUR SUB	DR TP OR	02/15/87 to 02/15/91	
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38	Triton Engineering Services	SUR SUB	OR	03/11/87 to 03/11/91	
39	University of Houston at Victoria	SUR SUB	DR TP OR	10/16/89 to 10/16/93	
40	University of Oklahoma	SUR SUB	DR TP OR	07/10/87 to 07/10/91	
41	University of Southwestern Louisiana	SUR SUB	DR TP OR	11/17/87 to 11/17/91	
42	University of Texas (Petex)	SUR SUB	DR TP OR	05/08/87 to 05/08/91	
43	Unocal	SUR SUB	DR TP OR	09/16/88 to 09/16/92	
44	Ventura College	SUR SUB	DR TP OR	03/15/87 to 03/15/91	
45	Well Control School	SUR SUB	DR TP OR	11/09/88 to 11/09/92	
46	Westec-Taft College	SUR SUB	DR TP OR	04/12/87 to 04/12/91	
47	Western Oceanic, Incorporated	SUR SUB	DR TP OR	05/01/89 to 05/01/93	
48	Western Well Control School	SUR	DR TP OR	05/30/89 to 05/30/93*	
49	Uintah Basin Area Vocational Center	SUR SUB	DR TP OR	05/11/90 to 05/11/94*	
	The following school's Basic well-control program have expired:				
	Operations, Inc	SUR SUB	DR TP OR	03/01/89	EXPIRED
	Cudd Pressure Control, Incorporated	SUR SUB	DR TP OR	04/29/85 to 04/29/89	EXPIRED
	Dixilyn-Field Drilling	SUR SUB	DR TP OR	04/30/85 to 03/30/89	EXPIRED
	Preston L. Moore, Incorporated	SUR SUB	DR TP OR	08/01/89	EXPIRED
	Imco Services	SUR SUB	DR TP OR	08/31/89	EXPIRED
	Colorado Northwestern Community College	SUR SUB	DR TP OR	09/29/89	EXPIRED
	Northwestern Michigan College	SUR SUB	DR TP OR	04/17/90	EXPIRED
	Diamond M. Company	SUR SUB	DR TP OR	04/17/90	EXPIRED

Comments:
*=approval pending the results of onsite evaluation.
**=subsea approval pending the results of onsite evaluation.

[FR Doc. 90–23511 Filed 10–3–90; 8:45 am]
BILLING CODE 4310–MR–M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree; U.S. v. Bohemia Inc.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on September 14, 1990, a proposed Consent Decree in *United States* v. *Bohemia, Inc.*, Civil Action No. S–90–1173 LKK/GGH, was lodged with the United States District Court for the Eastern District of California. The Complaint sought penalties and injunctive relief against the Bohemia, Inc., an Oregon corporation, for violation of the Clean Air Act, 42 U.S.C. 7401, *et seq.* Specifically, Bohemia was charged with violations of both the PSD and NSPS requirements of the Act by (1) increasing the operating capacity of a wood waste-fired boiler, thereby creating a new major stationary source of air pollution and adding a second boiler which constitutes a major modification to a stationary source without the required PSD permit and, (2) commencing construction and operation of a stationary source without providing EPA the required notice and (3) failure to install certain monitoring equipment as required by NSPS. The proposed Consent Decree requires installation, on an enforceable construction schedule, of an ammonia injection system as the best available control technology for this facility. The proposed Consent Decree also requires the payment of a $350,000 civil penalty.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044. Comments should refer to *United States* v. *Bohemia, Inc.*, D.J. Ref. No. 90–5–2–1–1303.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Eastern District of

California, 3305 Federal Bldg., 650 Capitol Mall, Sacramento, California, at the Office of Regional Counsel, Environmental Protection Agency, 1235 Mission St., San Francisco, CA, 94103, and to the Environmental Enforcement Section Document Center, 1333 F Street, NW., Suite 600, Washington, DC 20004, phone number (202) 347-7829. A copy of the proposed Consent Decree may be obtained in person or by mail from the Document Center.

In requesting a copy, please enclose a check in the amount of $5.75 (25 cents per page reproduction cost) payable to the "Consent Decree Library."

George W. Van Cleve,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 90-23415 Filed 10-3-90; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree; U.S. v. Chemical Waste Management, Inc.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on September 26, 1990 a proposed Consent Decree in *United States* v. *Chemical Waste Management, Inc.*, Civil Action No. 88-7599, was lodged with the United States District Court for the Northern District of Ohio. The United States' Complaint in this case alleged violations of The Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6901 *et seq.*, from Chemical Waste Management, Inc.'s ("Chem Waste") operation of portions of a land disposal facility at Vickery, Ohio, without a permit or other legal authority and for failure to comply with regulations of RCRA for hazardous waste management and disposal facilities. The complaint also alleged violation of provisions of an EPA Consent Agreement and Final Order ("CAFO") entered under RCRA section 3008 and the Toxic Substances Control Act section 16(a) on April 5, 1985, relating to groundwater monitoring at the facility.

The proposed Consent Decree requires that Chem Waste submit closure plans for certain impoundments at the facility to the Ohio Environmental Protection Agency and then implement the plans upon their approval, and also, by declaration, modifies one subparagraph of the CAFO concerning the timing and content of groundwater monitoring reports. Chem Waste will be subject to stipulated penalties for specified failures to comply with the Decree. The proposed Decree also provides that Chem Waste will pay the United States a civil penalty of $750,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Chem Waste Management, Inc.*, DOJ Ref. No. 90-7-1-447.

A permissive counterclaim Chemical Waste Management asserted against EPA with regard to disposition of a large wastepile at the same facility is resolved by separate stipulation, and is not subject to public comment, because this counterclaim is separate from the claims asserted by the United States in its Complaint. Nevertheless, copies of the pertinent documents are available as described in the following paragraph.

The proposed Consent Decree and separate stipulation may be examined at the Offices of the United States Attorney, Room 307, U.S. Courthouse, 1716 Spielbusch Avenue, Toledo, Ohio 43624, at the Region V Office of the United States Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, and at the Environmental Enforcement Section Document Center, 1333 F Street NW., Suite 600, Washington, DC 20004, 202-347-7829. A copy of the proposed Consent Decree and separate stipulation may be obtained in person or by mail from the Document Center. In requesting a copy, please enclose a check in the amount of $6.75 (25 cents per page reproduction costs) payable to "Consent Decree Library."

Richard B. Stewart,

Assistant Attorney General, Environmental and Natural Resources Division.

[FR Doc. 90-23416 Filed 10-3-90; 8:45 am]

BILLING CODE 4410-01-M

Consent Judgment in Action; U.S. and N.Y.'s Occidental Chemcial Corp. and City of Niagara Falls

In accordance with Departmental Policy (*see generally* 28 CFR 50.7, 38 FR 19029), notice is hereby given that a Supplemental Stipulation—captioned "Stipulation on Requisite Remedial Technology (RRT Program)"—in *United States and the State of New York* v. *Occidental Chemical Corporation and the City of Niagara Falls*, Civ. Action No., 79-988 (JTC) (S-Area Landfill), was lodged with the United States District Court for the Western District of New York on September 21, 1990. The complaint was filed in December 1979 under the Safe Drinking Water Act, 42 U.S.C. 3001, the Resource Conversation and Recovery Act ("RCRA"), 42 U.S.C. 6973, the Clean Water Act, 33 U.S.C. 1364, and the Rivers and Harbors Act, 33 U.S.C. 407. The Supplemental Stipulation describes the comprehensive remedy which will be implemented at the S-Area Hazardous Waste Landfill Site in Niagara Falls, New York. The S-Area Landfill is a 7-acre site bounded on the east by OCC's chemical plant on Buffalo Avenue ("Plant Site"), on the South by the Niagara River, and on the West by the City's Drinking Water Treatment Plant.

The original 1985 Stipulation and Judgment, which provided for a containment remedy and required OCC to perform additional studies and assessments to determine whether additional remedial work would be necessary was signed and filed by the parties in 1984, and was approved and entered by the Court in 1985. The public also should be aware that OCC's Plant Site is covered by RCRA Permit Number NYD000824482. This permit provides that corrective action at S-Area will be addressed pursuant to the terms of this 1985 Stipulation and Judgment. Because the instant Supplemental Stipulation will amend the 1985 Stipulation and Judgment, it accordingly will amend the S-Area corrective action referenced in the permit.

The Supplemental Stipulation is necessary because all of the facts available today, including data from OCC's field studies performed pursuant to the 1985 Stipulation and Judgment, reveal that modification and a supplementation of the original containment remedy is warranted. The remedy provided for in the Supplemental Stipulation is a containment remedy, similar to the containment remedy initially agreed upon by the parties in 1985, with hydraulic, chemical, and tracer monitoring programs. EPA estimates that this remedy to be implemented by OCC will cost roughly 25 million dollars in capital costs and 2.6 million dollars per year to operate, and that the remedy has a total present worth of 50 million dollars.

The Supplemental Stipulation also requires OCC to make payments to the City of Niagara Falls to help finance the construction of a new Drinking Water Treatment Plant.

The Department of Justice will receive for sixty (60) days from the date of publication of this notice, written comments relating to the Supplemental Stipulation. Comments should be addressed to the Assistant Attorney General, Environment and Natural

Resources Division, Department of Justice, Washington, DC 20530 and should refer to DOJ #90-7-1-41.

The Supplemental Stipulation may be examined at the Office of the United States Attorney, 502 United States Courthouse, 68 Court Street, Buffalo, New York 14202; at the Region II Office of the Environmental Protection Agency, Federal Plaza, New York, New York, 10278; EPA Public Information Office, Carborundum Center, Suite 530, 345 Third Street, Niagara Falls, New York 14303; and the Environmental Enforcement Section, Environment and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the Supplemental Stipulation may be obtained in person or by mail from the Environmental Enforcement Section Document Center, 1333 F Street, Suite 600, NW. Washington, DC 20004, Telephone Number (202) 347-2072. In requesting a copy, please enclose a check in the amount of $83.50 (25 cents per page reproduction charge) payable to Consent Decree Library.

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 90-23499 Filed 10-3-90; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree; United States v. Simon & Sons et al.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on September 11, 1990 a proposed consent decree in *United States* v. *Simon & Sons et al.*, Civil Action No. C90-5373, was lodged with the United States District Court for the Western District of Washington at Tacoma. The proposed consent decrees concern a complaint filed by the United States under sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (CERCLA), 42 U.S.C. 9606, 9607. This is a civil action for recovery of response costs that have been and will be incurred by the United States in response to releases and threatened releases of hazardous substances from the same facility, known as the "Tacoma Tar Pits Site" located in the Commercement Bay Tide Flats area of Tacoma, Washington, between the Puyallup River and the City of Tacoma waterway. The consent decrees provide that the generator defendants (six electric utilities) will pay $963,000 and the four landowner defendants will pay $218,700 to the Hazardous Substances Trust Fund for a total payment of $1,182,300. This total represents EPA's past costs in responding to the contaminated conditions at the site. In addition to the cash payment to be made pursuant to their consent decree, the landowners must also provide access to their property for remedial activities, and agree to institutional land use controls restricting future use of property contained within the site.

The Department of Justice will receive for a period of thirty (30) days from the date of publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Environmental and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Joseph Simon & Sons, et al.*, D.J. Ref. 90-11-3-307.

The proposed consent decrees may be examined at the office of the United States Attorney for the Western District of Washington at Tacoma, 1145 Broadway Plaza, Tacoma, Washington, 98402 and at the Region X Office of the United States Environmental Protection Agency, Lynn M. Williams, Administrative Records Coordinator, Office of Regional Counsel, 1200 Sixth Avenue, Seattle, WA 98101. The proposed consent decrees may be examined at the Environmental Enforcement Section, Environment and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530 and at the Tacoma Public Library, Main Branch, 1102 Tacoma Avenue South, Tacoma, Washington 98402. A copy of the Consent Decrees may be obtained in person or by mail from the Environmental Enforcement Section Document Center, 1333 F Street, NW., Suite 600, Washington, DC 20004, 202-347-2072. In requesting copies, please enclose a check in the amount of $13.50 (25 cents per page reproduction cost) payable to the Consent Decree Library.

The Administrative Record may be examined at the Region X Office of the United States Environmental Protection Agency, Lynn M. Williams, Administrative Records Coordinator, Office of Regional Counsel, 1200 Sixth Avenue, Seattle, WA 98101 and at the Tacoma Public Library, Main Branch, 1102 Tacoma Avenue South, Tacoma, Washington 98402.

George W. Van Cleve,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 90-23497 Filed 10-3-90; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

[Docket No. 90-22]

Stanley J. Dombek, Midwest City, OK;

Notice is hereby given that on February 22, 1990, the Drug Enforcement Administration, Department of Justice, issued to Stanley J. Dombek, M.D., an Order to Show Cause as to why the Drug Enforcement Administration should not deny your application, executed on April 25, 1989, for DEA Certificate of Registration.

Thirty days have elapsed since the said Order to Show Cause was received by Respondent, and written request for hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on October 17, 1990, commencing at 10 a.m., at the U.S. Tax Court, Main Place Building, 420 West Main Street, Courtroom 1020, Oklahoma City, Oklahoma.

Dated: September 27, 1990.

Robert C. Bonner,

Administrator, Drug Enforcement Administration.

[FR Doc. 90-23508 Filed 10-3-90; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Office of the Secretary

Contractor-Subcontractor Issues in the Petrochemical Industry, Additional Surveys

AGENCY: Office of the Secretary, Labor.

ACTION: Notice of expedited information collection clearance under the Paperwork Reduction Act.

SUMMARY: The Occupational Safety and Health Administration (OSHA), U.S. Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35, 5 CFR Part 1320 (53 FR 16618, May 19, 1988)), is submitting a request for approval to the Office of Management and Budget for an additional two surveys and related data gathering to support an OSHA study of contractor-subcontractor issues in the petrochemical industry. OSHA is

preparing a third additional survey which will be submitted to OMB under separate cover within 60 days of this submission. These will be one time only surveys. These three inter-related surveys will act to supplement the original ongoing OSHA survey of petrochemical industry managers.

DATE: OSHA has requested an expedited review of this submission under the Paperwork Reduction Act; this OMB review has been requested to be completed by November 3, 1990.

FOR FURTHER INFORMATION CONTACT: Comments and questions regarding the survey or reporting burden should be directed to Paul E. Larson, Departmental Clearance Officer, Office of Information Management, U.S. Department of Labor 200 Constitution Avenue, NW., Room N1301, Washington, DC 20210 (202 523–6331). Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for OSHA, Office of Management and Budget, room 3001, Washington, DC 20503 (202 395–6880).

Any member of the public who wants to comment on the information collection clearance package which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Average burden hours/minutes per response: .036 hours
Frequency of response: (one time only)
Number of respondents: 1,410
Annual burden hours: 505
Affected Public: Individual/households; Business or other for profit; small businesses or organizations
Respondents obligation to reply: (voluntary)

Signed at Washington, DC this 26th day of September 1990.

Theresa M. O'Malley,

Acting Departmental Clearance Officer.

Supporting Statement for Surveys and Related Data Gathering to Support an OSHA Study of Contractor-Subcontactor Issues in the Petrochemical Industry

1. Necessity of Data Collection

The Occupational Safety and Health Administration (OSHA) has awarded a grant to the John Gray Institute of Lamar University in Beaumont, Texas to conduct a national study of safety and health issues as they relate to contractor and direct hire employees in the petochemical industry. This study was initiated in response to the catastrophic explosion and fire at the Phillips 66 Houston Chemical Complex in Pasadena, Texas on October 23, 1989. The Phillips explosion took the lives of 23 workers and injured over 100 others. This industrial accident, one of the nation's worst, prompted Secretary of Labor Dole to promise President Bush that OHSHA would coordinate a complete federal investigation of the accident and submit a formal report to him within six months.

More recent accidents have contributed to the urgency with which OSHA continues to pursue safety and health issues in this industry. A July 5 explosion at the ARCO facility in Houston killed 17 workers and injured two more. On July 20, an explosion at BASF in Cincinnati resulted in one fatality and 72 injuries. As recent as August 24, a fire at Shell Oil Company injured 4 workers, but no fatalities were reported.

Congress has shown a great deal of interest in this issue, and accordingly convened a hearing on the ARCO explosion specifically and petrochemical facility accidents in general on July 23, 1990. An oversight hearing held on August 1 also resulted in several questions concerning OSHA's activities in the chemical and petrochemical industry.

An initial survey of petrochemical industry managers was reviewed by OMB earlier this year and the data collection process has been completed. During review of the original survey, three additional surveys were also proposed to supplement the information gathered at this time. Two of those supplemental surveys are included in this OMB submission, and the third will be submitted subsequently. Much of the justification for the additional surveys parallels that of the initial survey. Using a similarly formatted questionnaire, the proposed two surveys enclosed in this submission are targeted for petrochemical direct-hire employees, and petrochemical contractor employees. The third additional survey to be submitted at a later date is targeted at contractor employers.

One critical component of the report that will include all three surveys will be an examination of the extent to which petrochemical companies contract out hazardous work such as construction, maintenance and waste removal, and the extent to which this contracting, or its management process, affects the safety and health of workers. This will be part of an ongoing effort to determine ways to improve safety and health in the petrochemical industry. The results will be used to provide a sound basis for the best approach that employers can take in protecting workers at petrochemical plants where contractors are used and may also be used by OSHA in subsequent rulemaking.

A steering committee has been formed to provide guidance and input to the John Gray Institute on the scope and direction of the study. The committee is comprised equally of representatives of organized labor, representatives from the petrochemical industry and impartial experts from such fields as chemical engineering, occupational medicine and industrial relations.

At the time the original survey of plant managers was being proposed by the Steering Committee, it became clear that surveying other involved parties outside of plant management would add a valuable perspective that could not be gained from the original survey alone. The Steering Committee, comprised of diverse membership, deliberated that the most appropriate way to gain this perspective was to survey direct-hire and contract employees, as well as contractor management, directly. OSHA fully concurs that this tripartite is vital to the outcome of this study.

OSHA's Congressional mandate stipulates that the agency carefully design and study its regulatory proposals. Section 6(b)(5) of the OSH Act U.S.C. 655 (b)(5) mandates that regulations promulgated by the Agency shall most adequately assure worker safety and health "to the extent feasible on the basis of the best available evidence." They are to be based on "research and the latest available scientific data." Section 6(f) of the Act requires regulations to be justified by "substantial evidence in the record" and authorizes the Secretary of Labor "to enter into contracts, agreements or other arrangements with appropriate public agencies or private organizations for purposes of conducting studies related to his responsibilities under the Act." Thus OSHA is obligated to gather data on the consequences of future actions.

Executive Order 12291 reiterates this obligation by requiring the preparation of preliminary and final regulatory impact analyses. The Regulatory Flexibility Act also requires that an analysis be conducted on the impact of any proposed rules on small entities.

In order to fulfill the Congressional and Presidential mandates and to evaluate the impact of proposed recommendations on proposed rules, OSHA requires a data base that includes current industry practices and identifies situations where potential hazards exists. As discussed below, none of the available data sources are adequate for this purpose.

Schedule for Survey Design and Competition

Submit information collection plan to OMB—September, 1990
Publish in **Federal Register** a notice of survey submission to OMB and survey instruments—September, 1990
Receive OMB approval (30 days after FR notice is published)
Subcontractor delivers report to Contractor (6 weeks after OMB approval)
Contractor submits final report to OSHA (8 weeks after OMB approval)

2. Use of the Information

The data collected through this effort will be used by OSHA (and its contractors) to prepare a report on the use of contractors in the petrochemical industry and their relationship, if any, to the safety and health of workers in this industry. The data may be used in the finalization of rulemaking addressing process safety management. The data will also be shared with any interested parties including the affected industry and unions.

The following issues and questions are examples of the types of information the surveys will provide:

—Description of direct-hire and contract employee training programs
—Employees' perception of management's commitment to safety and health in the workplace
—Specific safety practices for high risk activities
—Accidents and injuries among fellow direct-hire and contract employees
—Need to obtain authorization before work is initiated
—The perceived effectiveness of joint labor/management safety and health committees
—Employees' perceptions of how their suggestions for improved safety and health are received by management and the effectiveness of union representatives

The survey asks a range of factual and perceptual questions that will be compared across employee type (direct-hire versus contract) and to responses made by plant management in the previous survey conducted by OSHA. While many of the questions appear to ask respondent opinions that may or may not be based on facts, it is necessary and critical to the goals of this study to determine exactly this distinction between employees' perceptions of plant safety and health and the actual management practices. Perceptual questions will only be used to supplement factual responses from other sources including this survey and may provide indications of where management practices may need to be modified. Because OSHA views issues of safety and health in the petrochemical industry with the utmost concern, OSHA feels it critical to incorporate information from every possible source. Responses to perceptual questions are only a small segment of the information that OSHA is gathering on this issue.

The underlying universe for this survey design is all establishments in SICs 1321, 2821, 2822, 2869, and 2911. A random stratified sample design was used to choose plants from the underlying universe, and surveys were sent to 554 plants. Of these plants, 304 plants responded with a full set of survey responses. For purposes of the enclosed employee surveys, a systematic probability proportional to size design was used to select 60 establishments from among the 304 that originally participated in the plant management survey. Following a letter requesting lists of names of their direct-hire and contractor employees, follow-up phone calls will be made to these establishments if the response rate is insufficient or not within the necessary time frame.

3. Use of Technology to Reduce Burden

The effort will be in the form of a telephone interview with respondents. Respondent employees will be contacted at home. If the respondent can not be reached at home the first time, three follow-up telephone calls will be made to the respondent, attempting to vary the time and day of week the calls are made to maximize the response rate.

4. Identification and Duplication of Information

Significant effort has been expended in collecting and examining existing sources of information relating to the use of contractors in the petrochemical industry. This has been used to guide the contractor in their construction of the survey instruments. OSHA's Integrated Management Information System (IMIS) has been searched for inspection and accident histories. The data were used to provide background to the contractor. The Bureau of Labor Statistics (BLS) provided information on overall injury incidence rates, wage rates, and other associated studies in the industries of interest.

5. Inadequacy of Existing Data Sources

None of the existing data sources provides information on the number of contractors in the petrochemical industry. Specifically, BLS injury incidence rates do not reflect the degree of hazards in particular industries. As a result, the injury records of individual contract employers are not reflected in the data for the entire petrochemical industry. Therefore, these surveys will collect data on the practices of all employers at a particular petrochemical site. Data on accident and injury histories for each employer at a site will be collected to facilitate a study of both overall rates between prime employers and contractors at the same site.

6. Minimizing Burden on Small Business

This data collection effort involves the collection of information from both large and small firms, however the primary emphasis will be on the larger firms where contracting is more prevalent. Every effort has been made to minimize respondents burden. The survey instruments have been designed to allow the respondents to provide estimates and approximations rather than detailed information of the type which would lengthen response time. Respondent burden will be limited by avoiding requests which require extensive file or record review.

7. Recurrent Survey Consequences

These efforts are one-time, non-recurring surveys. The consequences associated with less frequent collection are not applicable.

8. Consistency with 5 CFR 1320.6

This request is consistent with the guidelines in 5 CFR 1320.6.

9. Expert review of the Survey Questionnaires

The steering committee has had numerous discussions with the contractor in order to assess the substance of the survey questions. The clarity of instructions and other specific survey design elements have been reviewed by the contractor's survey experts, OSHA personnel and by expert safety consultants in industry and with unions.

A. The survey instrument has been reviewed by:

Steering Committee Members

Dr. Eugene Kremer III, Steering Committee Chairman, Occupational Physicians' Service.
Mr. Dan Bennett, Vice-President, Associated Builders and Contractors.
Dr. John Hoffman, CSP, Safety Engineering Laboratories, Inc.
Dr. Thomas A. Kochan, Professor of Management, Massachusetts Institute of Technology.
Mr. Bob Wages, Vice-President, Oil, Chemical & Atomic Workers International Union.

Mr. Bob McCormick, President, National Contractors Association.
Mr. William J. Mottel, Director, Safety and Occupational Health, DuPont Co.
Mr. Don Helin, Chemical Manufacturers Association.
Mr. David Ortlieb/Mr. Walter Fluharty, Director, Health and Safety Department, International Chemical Workers Union.
Mr. S.C. Pierce, Manager, Refining & Transportation Engineering, Amoco Oil Company.
Mr. C.T. Saywer, Vice-President, American Petroleum Institute.
Mr. Jim Valenti, United Steel Workers of America.
Mr. Gale Van Hoy, Executive Secretary, Texas Building Trades.
Mr. W.G. Bell, Senior Vice-President & Director, Bechtel Group, Inc.
Mr. Joe M. Stevens, Jr., Vice President Employee Relations & Corporate Affairs, Brown & Root, Inc.

Also reviewed by:

John Wells, President, John Gray Institute.
Michal Smith, John Gray Institute.

Department of Labor Review:

Alan McMillan, Deputy Assistant Secretary, Occupational Safety and Health Administration.
Frank Frodyma, Deputy Director, Directorate of Policy, Occupational Safety and Health Administration.
Bob Casady, Office of Research and Evaluation, Bureau of Labor Statistics.

B. Problems that arose during this review were resolved by DOL, OSHA and BLS representatives.

C. Public comment will be solicited through the Federal Register notice for the study.

10. Confidentiality

Procedures have been developed to protect the confidentiality of the collected data. These measures are summarized below:

A. All OSHA contractor and subcontractor personnel will be given instructions regarding the importance of keeping all information they obtain from the respondents confidential.

B. Strict coding will be maintained during the coding procedure.

C. Diskettes containing completed survey data will be stored in locked file cabinets at the contractor's office.

D. Publication of study results will be of a statistical nature only. Respondents will never be identified in any publication or presentation, nor will their names be made available to other individuals or groups.

11. Sensitive Questions

The proposed survey instruments contain questions of a potentially sensitive nature. Respondents are asked their age, sex, and nationality. These data will permit the generation of cross-tabulations of safety training by these characteristics.

12. Costs

The total one-time cost to the government of the proposed data collection is approximately $125,000. This estimate includes costs incurred by contractors for administration and operation of the data collection, tabulation of survey results, and subsequent analyses (including benefit and cost estimates, small entity impacts, etc.).

13. Estimates of Burden

This survey was not included in the agency's ICB as the need arose as a result of the Phillips 66 catastrophe.

Every effort will be made to minimize respondent burden. All survey instruments have been designed to allow the respondent to provide reports of actual experiences. Respondents are not expected to perform new data compilation activities.

The completion time for each questionnaire will vary, depending upon the respondent. It is estimated that a fully completed survey will require not more than 20 minutes on average. The following table summarizes the burden for each group of respondents:

RESPONDENT BURDEN ESTIMATES

Type of respondent	Number of respondents	Completion time (min.)	Total burden (hrs.)
Plant manager, response	60	30	30
Contractor employer response [1]	150	30	75
Direct-hire employee	600	20	200
Contractor employee	600	20	200
Total	1,410		505

[1] Like plant managers, contract employers are contacted to obtain lists of their employees that work at the same plants.

14. Changes in Anticipated Burden

These are one-time data collection efforts and represent a program increase from that represented in the ICB.

15. Plans for Tabulation of the Data

The survey data will be analyzed and presented to OSHA in a final report by the contractors. Estimates will be derived to determine the relative hazards in the petrochemical industry. This information needed to make these estimates was determined in the first phase of the study (from the plant management survey). These derivations are a component of the final report that the contractor will be presenting OSHA after all the surveys have been completed, and are not necessarily the objective of the additional surveys enclosed here.

These additional surveys will also generate data on the use of contractors by process in the petrochemical industry data and on the injuries and illnesses associated with these processes. These data will help establish a data base on the distribution of worker hazards among industries, and within industrial facilities. The data will also be correlated with information gathered in the survey on the training and safety programs of respondents. OSHA expects to make numerous cross-tabulations to determine the relationships among these various components of worker safety conditions.

Statistical Methods Employed

1. Sample Design

OSHA has contracted for additional surveys to supplement an original survey conducted on plant management. This document serves to describe both the total universe from which the original survey was chosen, and the subpopulation (those 304 plants that responded to the first survey) from which was chosen 60 plants to conduct the direct-hire and contract employee surveys.

The first stage of the survey design calls for a probability proportional to employment size sample of 60 plants from the 304 plants whose managers were surveyed in the earlier research. The 304 plants were selected as a probability sample of the total universe. The design is intended to produce data about two categories of employees in the plants sampled as a whole.

While preliminary results of the plant management survey are a statistical representation of trends in the petrochemical industry as a whole, OSHA may draw the same kind of statistical inference from these additional surveys. Because the direct-hire and contractor surveys are conducted on a pre-selected sub-sample of the petrochemical industry, OSHA does not intend to use the results of these two surveys to be representative of the petrochemical industry as a whole. Rather, the results will be a statistically valid representation of trends only among the 304 petrochemical plants. In order to make inferences about the entire petrochemical industry as a whole,

estimates produced from the data in this survey will need to be adjusted to account for probability sampling methods used in the original survey.

The solicitation of more than 60 plants to participate in these surveys would lend greater statistical validity to the results and be a more accurate representation of the 304 plants and the underlying universe. However, appreciation must be given to the sensitive nature of eliciting such information from petrochemical companies. Various legal and administrative policies (state laws, union rules, company policies) prohibit many companies from releasing the identities of their employees. Therefore, OSHA, along with its subcontractor, have carefully balanced the need to compromise the number of companies that can be surveyed with the need to gather a statistically representative sample.

The universe which was represented by the original survey of plant management was all direct-hire and contract employees in all plants in SIC codes 2821, 2822, 2869, 2911 and 1321, which are respectively, Plastics, Rubber, Organic Chemicals, Petroleum Refining, and Gas Processing. The object of studying these plants is to determine the extent to which they use contractors and the nature of the safety and health practices of these contractors' employees compared to the plants' regular direct-hire employees. OSHA's mandate is clearly to make the workplace safe for employees, so the study is more interested in plants with more employees. A sampling design which samples plants with probability roughly proportional to the number of employees would seem to be appropriate. OSHA supports the choice of this sample design because the larger firms are more likely to hire contract employees and it is primarily the safety and health practices of these types of firms that result in catastrophic releases and explosions.

In choosing a population to give the direct-hire and contract employee surveys, a decision was made to sample from among the 304 plants that responded to the original plant management survey performed by the John Gray Institute earlier this year. The justification for this decision was that this sample represents petrochemical companies that are likely to respond to further surveys on safety and health practices (therefore securing a fairly high response rate) and that the 304 plants are a representative sample of the universe of the specified SIC codes as a whole. The use of these same 304 plants as the population for this study will enable the analysis to compare the responses of managers and employees.

Accordingly, the following tables have been compiled to depict the composition of both the underlying universe from which the original 304 plants were first chosen, and the methods that will be used to choose 60 plants from among the 304 plants used in the original study. It is expected that 50 responses will be received from the 60 plants that are sent surveys. To supplement this population, 60 additional plants will be selected in the same manner and serve as substitutes should the original survey population prove to be inadequate.

Table 1 shows the number of plants that comprise the underlying universe of the all plants in the specified SIC code as reported in the Dun and Bradstreet listing from which this information was obtained.

TABLE 1.—DUN AND BRADSTREET LISTING OF PLANTS BY SIC AND NO. OF EMPLOYEES

[Underlying Universe]

SIC	Description	1–19	20–99	100–249	250+	Total
2812	Plastics	663	482	136	90	1,371
2822	Rubber	74	71	14	19	178
2869	Organic Chemicals	631	254	79	83	1,047
2911	Petroleum Refining	618	245	102	146	1,111
1321	Gas Processing	156	74	9	1	240
	Total establishments	2,142	1,126	340	339	3,947

Table 2 shows the number of employees found in each of the cells represented in Table 1 for the "No. of Employees" groupings for the entire universe of the specified SIC codes.

TABLE 2.—ESTIMATED NUMBERS OF EMPLOYEES IN UNIVERSE PROVIDED BY DUN AND BRADSTREET LISTING

SIC	Description	1–19	20–99	100–249	250+	Total
2812	Plastics	5,079	21,912	26,009	55,900	102,900
2822	Rubber	533	3,153	2,105	11,615	17,406
2869	Organic Chemicals	3,959	11,806	11,626	87,972	115,363
2911	Petroleum Refining	3,888	10,273	16,215	141,400	171,776
1321	Gas Processing	4,540	12,600	1,575	350	19,065
	Total employment	17,999	59,744	51,530	297,237	426,510

Table 3 shows the number of plants among the 304 responding plants found in each of the specified SIC categories broken down by number of employees reported in the Dun and Bradstreet listing.

TABLE 3.—LIST OF RESPONDING PLANTS BY SIC AND NO. OF EMPLOYEES

SIC	Description	1–19	20–99	100–249	250+	Total
2812	Plastics	2	15	15	50	82
2822	Rubber	3	5	3	14	25
2869	Organic Chemicals	0	5	13	41	59

TABLE 3.—LIST OF RESPONDING PLANTS BY SIC AND NO. OF EMPLOYEES—Continued

SIC	Description	1–19	20–99	100–249	250+	Total
2911	Petroleum Refining	5	10	17	77	109
1321	Gas Processing	4	11	3	1	19
SIC	Not Identified [1]	1	3	1	5	10
	Total establishments	15	49	52	188	304

[1] Several respondents turned in completed surveys without identifying their SIC codes. These responses have been included in the totals because they represent a complete set of valid responses.

Table 4 represents a breakdown of the number of employees at the 304 plants who responded to the survey. These numbers correspond to Table 3.

TABLE 4.—ESTIMATED NO. EMPLOYEES AT 304 PLANTS RESPONDING TO SURVEY

SIC	Description	1–19	20–99	100–249	250+	Total
2812	Plastics	15	664	2,126	33,517	36,222
2822	Rubber	19	251	490	9,004	9,764
2869	Organic Chemicals	0	320	2,078	48,478	50,877
2911	Petroleum Refining	25	540	2,968	69,661	73,193
1321	Gas Processing	31	422	533	950	1,936
	Total employment	90	2,197	8,195	161,610	172,092

A systematic probability proportional to size design was used to select 60 plants from among the 304 plants in the original survey. The results of this selection are found in Table 5.

TABLE 5.—SELECTION OF 60 PLANTS FOR EMPLOYEE SURVEYS

SIC Code	<20 Empls.	20–99 Empls.	100–249 Empls.	250+ Empls.	Total
2821	0	3	3	8	14
2822	0	1	0	2	3
2869	0	2	2	13	17
2911	1	2	3	20	26
1321	0	0	0	0	0
Total	1	8	8	43	60

The current design has the advantages of representing each plant in the universe with probability proportional to the number of its employees.

2. Selection of Employees

Each plant will have an average of 12 direct-hire and 12 contractor employees interviewed. To accomplish this all employees within each plant will be listed and a random start selected between 1 and the interval, and the interval applied to the list to select the individuals.

This sample design is intended to produce a minimum of 1200 valid responses (600 direct-hire and 600 contractor employees). Given the specific nature of much of the data sought, even conscientious telephone follow-up activities will likely not generate much more than a 75% response rate, though every effort will be made to do so. To assure a high response rate, a substitute list of employees will be used to randomly select substitute employees in the event that they cannot be reached by telephone.

Lists of employees names and phone numbers will be obtained from both the direct-hire and contractor employers. The tables above described the underlying universe for direct-hire employees. There is not, however, such data available for the universe of contract employees. Conclusions reached on issues relating to contract employees can therefore only be representative of the contract employees working at the 60 plants.

For both direct-hire and contract employees, respective employers will be asked to provide a list of names and phone numbers of all employees. A random stratified sample design will be used to choose 600 employes from both categories. It is estimated that there are approximately 150 contractors who have employees at the 60 plants. From the responses that are received, contract employees will be selected randomly from the entire pool of responses, and not stratified by plant. The reason for this methodology is that less is known about the underlying universe for contract employees, and a more evenly distributed sample (not based proportional to size) would more accurately reflect contractors as a whole.

The primary objective of this study is to determine whether direct-hire and contract employees operate under (a) the best health and safety practices, to the extent those are known and measurable, and (b) whether the injury rates are different for contractor and direct-hire employees. The sample size is sufficiently large to make statistically valid statements about health and safety practices in these industries. The sampling design allows one to describe both the behavior of plant managers and the environment in which the average worker in the industry operates.

Questionnaire A: Direct the Employment Survey

LOUIS HARRIS AND ASSOCIATES, INC.,
630 Fifth Avenue, New York, New York 10111

FOR OFFICE USE ONLY:

Questionnaire No.: _____
5-6-67-8-

Study No. 902039 (Direct-Hire Employees)

September 24, 1990

Sample Point No.
/___/___/___/___/___/___/___/___/___/___/
10-11-12-13-14-15-16

Time Started: _____ A.M./P.M.

Interviewer: _____

Date: _____

Area Code: _____
(17-19)

Telephone No.: _____
(20-26)

Respondent Name: _____
(-)

Respondent Phone Number: _____
(-)

Respondent Company: _____
(-)

Respondent Company Address: _____
(-)

City: _____
(-)

State: _____
(-)

Zip: _____
(-)

Site Location: _____
(-)

Hello, I'm _____ from Louis Harris & Associates, the national public opinion research firm. We're conducting a national study for OSHA on safety practices in the petrochemical industry, and would like to ask you some questions. If you don't know the answer to any question feel free to say you don't know. (INTERVIEWER: Not sure or don't know is an acceptable answer.) Your participation in this survey is completely voluntary.

READ IF NECESSARY

You were randomly selected to participate in this survey from a list of all employees provided by your employer. All of the information that you give will be kept completely confidential. All responses are looked at only in the aggregate. No names or addresses or people interviewed will be revealed to anyone outside of Louis Harris & Associates.

FROM OBSERVATION: Respondent Sex

Male ..... ((_____-1
Female ..... _____-2

We estimate that it will take and average of 20 minutes to complete this information collection including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information. If you have any comments regarding these estimates or any other aspect of this survey, including suggestions for reducing this burden, send them to the Office of Information Management, Department of Labor, Room N-1301, 200 Constitution Avenue, NW, Washington, D.C., 20210 and to the Office of Management and Budget, Paperwork Reduction Project, Washington, D.C., 20503

S1. First, I just want to verify that you have recently worked for (NAME OF COMPANY FROM SAMPLE) at (SITE LOCATION FROM SAMPLE)? Are you still at that site? IF NOT CORRECT: Have you worked there as recently as (INSERT DATE)?

Yes, still at site ..... ((_____-1
Yes, worked at site recently ..... _____-2
(ASK Q.S2)
No, not correct ..... _____-3
Not sure ..... _____-4
(SCREEN OUT Q.S1)

S2. Which of the following activities are/were you employed in at this site? READ LIST—MULTIPLE RECORD

Maintenance ..... ((_____-1
Field Technical Support ..... ((_____-1
Renovation or Turnaround ..... ((_____-1
Specialty ..... ((_____-1
Operations ..... ((_____-1
(ASK Q.S3)
None ..... ((_____-2
Not sure ..... ((_____-3
(SCREEN OUT Q.S2)

S3. What is your job title?

_____

_____

A1. The next series of statements deals with the management safety program and commitment to safety. For each one please tell me whether you agree strongly, agree somewhat, disagree somewhat, or disagree strongly.

	Agree strongly	Agree somewhat	Disagree somewhat	Disagree strongly	Not sure
1. Management does frequent safety inspections of my work area	((_____-1	_____-2	_____-3	_____-4	_____-5
2. My supervisor gives safety a high priority	((_____-1	_____-2	_____-3	_____-4	_____-5
3. The company I work for places a high priority on safety and health	((_____-1	_____-2	_____-3	_____-4	_____-5

A2. How often are accidents investigated on your job—always, frequently, sometimes or never?

Always ..... ((_____-1
Frequently ..... _____-2
Sometimes ..... _____-3
Never ..... _____-4
Not sure ..... _____-5

B1. The next statements deal with training and communication. For each one please tell me whether you would rate it as excellent, good, fair or poor?

	Excellent	Good	Fair	Poor	Not sure
1. How well new employees are trained in safety procedures	((_____-1	_____-2	_____-3	_____-4	_____-5
2. How well your employer has informed you about the hazards associated with the materials you work with	((_____-1	_____-2	_____-3	_____-4	_____-5
3. The ongoing training and refresher courses in safety procedures that you received at your plant	((_____-1	_____-2	_____-3	_____-4	_____-5

C1. The following statements are about communication between workers and plant management regarding safety at the plant. Please tell whether each statement is true always, sometimes, rarely, or never?

Rotate—Start at "X"	Always true	Sometimes true	Rarely true	Never	Not sure
( ) a. Employee suggestions for improving safety are taken seriously	((_____-1	_____-2	_____-3	_____-4	_____-5
( ) b. Supervisors are receptive to reports of safety problems	((_____-1	_____-2	_____-3	_____-4	_____-5
( ) c. Employees are encouraged to report safety problems to their supervisors	((_____-1	_____-2	_____-3	_____-4	_____-5
( ) d. Employees are afraid to report safety problems to their supervisor	((_____-1	_____-2	_____-3	_____-4	_____-5
( ) e. Accidents that happen at my workplace get reported	((_____-1	_____-2	_____-3	_____-4	_____-5

C2. Do you know anyone at your plant who you believe has been treated unfairly by management because he or she reported safety problems, or not?
Yes, know someone who has been treated unfairly.....(____–1
No, do not know someone who has been treated unfairly..... ____–2
Not sure..... ____–3

C3. Does a labor/management safety and health committee exist at this work site, or not?
Yes.....(____–1
(ASK Q.C4)
No..... ____–2
Not sure..... ____–3
(SKIP TO Q.C5)

C4. How would you rate the job done by the labor/management committee in improving safety conditions—excellent, pretty good, only fair, or poor?
Excellent.....(____–1
Pretty good..... ____–2
Only fair..... ____–3
Poor..... ____–4
Not sure..... ____–5
(SKIP TO Q.D1)

C5. Are you represented by a union, or not?
Yes.....(____–1
(ASK Q.C6)
No..... ____–2
Not sure..... ____–3
(SKIP TO Q.C8)

C6. Are you a union officer, or not?
Yes.....(____–1
No..... ____–2
Not sure..... ____–3

C7. How would you rate the job done by your union representatives in improving safety conditions—excellent, pretty good, only fair, or poor?
Excellent.....(____–1
Pretty good..... ____–2
Only fair..... ____–3
Poor..... ____–4
Not sure..... ____–5
(SKIP TO Q.D1)

C8. Is there an employee who represents the employees in working with plant management on safety issues, or not?
Yes.....(____–1
(ASK Q.C9)
No..... ____–2
Not sure..... ____–3
((SKIP TO Q.D1)

C9. How would you rate the job done by this employee representative in improving safety conditions—excellent, pretty good, only fair, or poor?
Excellent.....(____–1
Pretty good..... ____–2
Only fair..... ____–3
Poor..... ____–4
Not sure..... ____–5

D1. The next questions deal with specific safety practices for high risk activities. For each one please tell me whether it happens always, usually, sometimes, rarely, or never. [If the question is not relevant to your work please state that it doesn't apply.]

	Always	Usually	Sometimes	Rarely	Never	Doesn't apply (vol.)	Not sure
1. Lock out, tag out or other proper isolating procedures are followed before opening lines	(____–1	____–2	____–3	____–4	____–5	____–6	____–7
2. Proper procedures are followed when starting up an operation after it has been shut down	(____–1	____–2	____–3	____–4	____–5	____–6	____–7
3. Emergency response procedures are tested to make sure they are in working order	(____–1	____–2	____–3	____–4	____–5	____–6	____–7
4. A good fire-fighting system is in place if needed	(____–1	____–2	____–3	____–4	____–5	____–6	____–7
5. Air quality checks are performed before a worker is allowed to enter a confined work space	(____–1	____–2	____–3	____–4	____–5	____–6	____–7
6. Workers are recommended when working in a confined work area	(____–1	____–2	____–3	____–4	____–5	____–6	____–7
7. You are informed if you are working with toxic materials	(____–1	____–2	____–3	____–4	____–5	____–6	____–7
8. You are informed if you are working with flammable or explosive materials	(____–1	____–2	____–3	____–4	____–5	____–6	____–7
9. Appropriate precautions are used when working with toxic materials	(____–1	____–2	____–3	____–4	____–5	____–6	____–7
10. Appropriate precautions are used when working with flammable or explosive materials	(____–1	____–2	____–3	____–4	____–5	____–6	____–7

D2. Has your plant management adequately informed you about the emergency procedures to follow if a fire or other accident occurs, or not?
Yes, adequately informed.....(____–1
No, not adequately informed..... ____–2
Not sure..... ____–3

E1. The next questions are about accidents and injuries among your fellow employees at your plant. From your direct knowledge about how often do (READ EACH ITEM) happen at your workplace—at least once a week, at least once a month, several times a year, about once a year, or less often that that?

	Once a week	Once a month	Several times a year	Once a year	Less often than that	Not sure
1. Injuries that require first aid only	(____–1	____–2	____–3	____–4	____–5	____–6
2. Injuries that require medical help	(____–1	____–2	____–3	____–4	____–5	____–6
3. Injuries that result in lost time or light duty	(____–1	____–2	____–3	____–4	____–5	____–6
4. Fatalities	(____–1	____–2	____–3	____–4	____–5	____–6
5. Fires	(____–1	____–2	____–3	____–4	____–5	____–6
6. Accidents that could easily have caused injuries	(____–1	____–2	____–3	____–4	____–5	____–6
7. "Near misses"—that is, dangerous events that almost caused accidents	(____–1	____–2	____–3	____–4	____–5	____–6

E2. How many times in the past year have *you* experienced (READ EACH ITEM)?

a. An injury that required first aid only ..... /_____/ Not sure ..... { {_____–1

b. An injury that required medical help ..... /_____/ Not sure ..... { {_____–1

c. An injury that resulted in lost time or light duty .....

IF "1" OR MORE IN Q.E2c, ASK Q.E3. OTHERS SKIP TO Q.G1.

E3. How many days were *you* out of work or on light duty as a resut of an injury on the job?. /_____/ Not sure ..... { {_____–1

G1. How many hours of safety-related training have you received from your employer in the past year? DO NOT READ LIST

0 ..... { {_____–1
1–4 ..... _____–2
5–8 ..... _____–3
9–20 ..... _____–4
21 or more ..... _____–5
Not sure ..... _____–6

G2. How many times in the past year have you met with others on the worksite, such as supervisors, co-workers or union representatives, to discuss safety issues? IF NEVER, RECORD 000

/_____/_____/_____/
Not sure ..... { {_____–1

G3. Which of the following types of safety orientation did you receive in the workplace—were you (READ EACH ITEM), or not?

	Received	Did not receive	Not sure
a. Given a talk	{ {_____–1	_____–2	_____–3
b. Given a tour of the work area	{ {_____–1	_____–2	_____–3
c. Shown a film	{ {_____–1	_____–2	_____–3
d. Given a chance to take part in an interactive discussion	{ {_____–1	_____–2	_____–3
e. Tested on the safety-related materials presented to you	{ {_____–1	_____–2	_____–3

G4. Are you a member of a workplace health and safety committee at this location that includes management representatives, or not?

Yes ..... _____–1
(ASK Q.G5)
No ..... _____–2
Not sure ..... _____–3
(SKIP TO Q.G6)

G5. How often has this committee met in the past year—at least weekly, monthly, quarterly, or less often than that?

At least weekly ..... { {_____–1
Monthly ..... _____–2
Quarterly ..... _____–3
Less often than that ..... _____–4
Not sure ..... _____–5

G6. How many walkaround inspections were conducted by this committee during the past year?

/_____/_____/ Inspections
Not sure ..... { {_____–1

H1. The next series of questions deals with the need to obtain authorization before the work is done. Before performing (READ EACH ITEM) do you have to obtain written authorization, oral authorization, both, or neither?

	Written	Oral	Both	Neither	Not sure
a. Any outsite work	{ {_____–1	_____–2	_____–3	_____–4	_____–5
b. Confined space entry	{ {_____–1	_____–2	_____–3	_____–4	_____–5
c. Hot work	{ {_____–1	_____–2	_____–3	_____–4	_____–5
d. Excavation	{ {_____–1	_____–2	_____–3	_____–4	_____–5
e. Work involving process	{ {_____–1	_____–2	_____–3	_____–4	_____–5

I1a. Does your work bring you into regular contact with contract employees?

Yes ..... { {_____–1
(ASK Q. Ib)
No ..... _____–2
Not sure ..... _____–3
(SKIP TO Q. F1)

I1b. As a formal part of your job do you supervise contract employees or not?

Yes ..... { {_____–1
No ..... _____–2
Not sure ..... _____–3

I1c. As an informal part of your job do you supervise contract employees, or not?

Yes ..... { {_____–1
No ..... _____–2
Not sure ..... _____–3

I2. In the past year, have you seen evidence that information about hazards was not adequately shared between your companies' employees and contract workers at your plant often, sometimes, rarely, or never?

Often ..... { {_____–1
Sometimes ..... _____–2
Rarely ..... _____–3
Never ..... _____–4
Not sure ..... _____–5

I3. In the past year, have you seen evidence of tension or conflict between your companies' employees and contract workers at your plant often, sometimes, rarely, or never?

Often ..... { {_____–1
Sometimes ..... _____–2
Rarely ..... _____–3
Never ..... _____–4
Not sure ..... _____–5

I4. In the last year, has your work with contract employees apart from construction workers at your plant increased, decreased, or stayed the same?

Increased ..... { {_____–1
Decreased ..... _____–2
Stayed the same ..... _____–3
Not sure ..... _____–4

I5. Have most of the contract employees you work with at your plant been working with you for several years on a regular basis or are most of the contract employees relatively new to (PLANT'S NAME)?

Most been there for several years ... { {_____–1

Most new....._____–2
Not sure....._____–3

I6. Do you feel the job security of direct employees of (Plant's Name) may be threatened by the use of contract workers, or not?
Yes, threatened.....((_____–1
(ASK Q. I8)
No, not threatened....._____–2
Not sure....._____–3
(SKIP TO Q. F1)

I7. Do you feel *your* job security may be threatened by the use of contract workers, or not?
Yes, threatened.....((_____–1
No, not threatened....._____–2
Not sure....._____–3

I8. In your experience, does the concern about job security ever hamper communication between direct hire and contract workers about safety at (Plant's Name), or not?
Yes, hampers safety communication ((_____–1
No, does not hamper safey communication....._____–2
Not sure....._____–3

I9. In the past year, have you seen evidence that information about hazards was not adequately shared between your companies' employees and maintenance workers at your plant often, sometimes, rarely, or never?
Often.....((_____–1
Sometimes....._____–2
Rarely....._____–3
Never....._____–4
Not sure....._____–5

I10. In the past year, have you seen evidence of tension or conflict between your companies' operators and maintenance workers at your plant often, sometimes, rarely, or never?
Often.....((_____–1
Sometimes....._____–2
Rarely....._____–3
Never....._____–4
Not sure....._____–5

F1. How old are you? *IF HESITANT, READ LIST*
18 to 20.....((_____–1
21 to 24....._____–2
25 to 29....._____–3
30 to 34....._____–4
35 to 39....._____–5
40 to 44....._____–6
45 to 49....._____–7
50 to 64....._____–8
65 to 74....._____–9
75 and over....._____–0
Not sure....._____–x

F2. What is the last year of school you have completed?
No formal schooling.....((_____–1
First through 7th grade....._____–2
8th grade....._____–3
Some high school....._____–4
High school graduate....._____–5
Some college....._____–6
Two-year college graduate....._____–7
Four-year college graduate....._____–8
Postgraduate....._____–9
Trade/technical/vocational after high school*.....XXX
Not sure....._____–0

F3. What is your hourly rate of pay?
$/____/____/____/____/
(-)
Not sure.....((____–1

F4. Are you entitled to company-paid injury pay if you get injured on your job, or not?
Yes.....((_____–1
No....._____–2
Not sure....._____–3

F5. What training did you have for your current job—did you have an apprenticeship/craft training or operator training program, or other (vocational/technical) training? *MULTIPLE RECORD*
Apprenticeship/craft training.....((_____–1
Operator training.....((_____–1
Other (vocational/technical) training ((_____–1
Not sure....._____–2

F6. How long have you been working in this industry?
If less than one year /_____/_____/
Months
(-)
/_____/_____/ Years
(-)
Not sure.....((_____–1

F7. How long have you worked for your current employer? *DO NOT READ LIST*
If less than one year /_____/_____/
Months
(-)
/_____/_____/ Years
(-)
Not sure.....((_____–1

F8. How many hours a week do you *usually* work at (Plant's Name)?
/_____/_____/_____/ Hours
(-)
Not sure.....((_____–1

F9. How often do you work more than 60 hours a week at (Plant's Name)? Is it never, rarely, occasionally, or frequently?
Never.....((_____–1
Rarely....._____–2
Occasionally....._____–3
Frequently....._____–4
Not sure....._____–5

F10. How many hours a day do you usually work?
/_____/_____/ Hours
Not sure.....((_____–1

F11. How often do you work more than 12 hours a day at (Plant's Name)? Is it never, rarely, occasionally, or frequently?
Never.....((_____–1
Rarely....._____–2
Occasionally....._____–3
Frequently....._____–4
Not sure....._____–5

F12. Are you of Hispanic origin or descent, or not?
Yes, of Hispanic origin.....((_____–1
No, not of Hispanic origin....._____–2
Not sure....._____–3

F13. Do you consider yourself white, black, Asian, or something else?
White.....((_____–1
Black....._____–2
Asian or Pacific Islander....._____–3
American Indian or Alaskan native
_____–4
Not sure....._____–5

That completes the interview. Thank you very much for your cooperation!
Time Ended: _____a.m./p.m.

*Interviewer: Probe for *Last* level of formal education and code into appropriate category

Questionnaire B: Contractor Employee Survey

LOUIS HARRIS AND ASSOCIATES, INC., 630 Fifth Avenue, New York, New York 10111

FOR OFFICE USE ONLY:
Questionnaire No.: _____
5–6–7–8
Study No. 902039 (Contractor Employees)
September 24, 1990
Sample Point No.
_____
10–11–12–13–14–15–16
Time Started: _____a.m./p.m.
Interviewer: _____
Date: _____
Area Code: _____
(17–19)
Telephone No.: _____
(20–26)
Respondent Name: _____
(-)
Respondent Phone Number: _____
(-)
Respondent Company: _____
(-)
Respondent Company Address: _____
(-)
City: _____
(-)
State: _____
(-)
Zip: _____
(-)
Site Location: _____
(-)

Hello, I'm _____ from Louis Harris & Associates, the national public opinion research firm. We're conducting a national study for OSHA on safety practices in the petrochemical industry, and would like to ask you some questions. If you don't know the answers please feel free to say so. (INTERVIEWERS: Not sure (or don't know) is an acceptable answer.) Your participation in this survey is completely voluntary.

READ IF NECESSARY

You were randomly selected to participate in this survey from a list of all employees provided by your employer. All of the information that you give will be kept completely confidential. All responses are looked at only in the aggregate. No names or addresses of people interviewed will be revealed to anyone outside of Louis Harris & Associates.

FROM OBSERVATION: Respondent Sex
Male.....((_____–1
Female....._____–2

We estimate that it will take an average of 20 minutes to complete this information collection including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information. If you have any comments regarding these estimates or any other aspect of this survey, including suggestions for reducing this burden, send them to the Office

of Information Management, Dept. of Labor, Room N–1301, 200 Constitution Ave., N.W., Washington, DC, 20210 and to the Office of Management and Budget. Paperwork Reduction Project, Washington, DC 20503.

S1. First, I just want to verify you have recently worked for (NAME OF COMPANY FROM SAMPLE) at (SITE LOCATION FROM SAMPLE)? Are you still at that site? If not correct: Have you worked there as recently as (INSERT DATE)?

Yes, Correct/Still at site ..... –1
Yes, Correct/Completed assignment ..... –2

(ASK Q.S2)

No, not correct ..... –3
Not sure ..... –4

(SCREEN OUT Q.S1)

S2. Which of the following activities are/were you employed in at this site? READ LIST—MULTIPLE RECORD

Maintenance ..... –1
Field Technical Support ..... –1
Renovation or Turnaround ..... –1
Specialty ..... –1
Operations ..... –1

(ASK Q.S3)

None ..... –2
Not Sure ..... –3

(SCREEN OUT Q.S3)

S3. What is your job title?

A1. The next series of statements deals with the contractor management safety program and commitment to safety. For each one please tell me whether you agree strongly, agree somewhat, disagree somewhat, or disagree strongly.

	Agree strongly	Agree somewhat	Disagree somewhat	Disagree strongly	Not sure
1. Management does frequent safety inspections of my work area	–1	–2	–3	–4	–5
2. My supervisor gives safety a high priority	–1	–2	–3	–4	–5
3. The company I work for places a high priority on safety and health	–1	–2	–3	–4	–5

A2. How often are accidents on your job investigated by contractor management—always, frequently, sometimes or never?

Always ..... –1
Frequently ..... –2
Sometimes ..... –3
Never ..... –4
Not sure ..... –5

A3. When you (work/worked) at (HOST PLANT) for (CONTRACTOR NAME), who (do-did) you report (READ EACH ITEM) to—the contractor (CONTRACTOR'S NAME), the host plant (HOST PLANT'S NAME), or both?

	Contractor	Host plant	Both	Neither (Vol.)	Not sure
( ) a. Accidents	–1	–2	–3	–4	–5
( ) b. Injuries	–1	–2	–3	–4	–5
( ) c. Safety problems	–1	–2	–3	–4	–5

B1. The next statements deal with training and communication by (NAME OF CONTRACTOR). For each one please tell me whether you would rate it as excellent, good, fair or poor?

	Excellent	Good	Fair	Poor	Not sure
1. How well new employees are trained in safety procedures	–1	–2	–3	–4	–5
2. How well your employer has informed you about the hazards associated with the materials you work with	–1	–2	–3	–4	–5
3. The on-going training and refresher courses in safety procedures that you received at your plant	–1	–2	–3	–4	–5

C1. The folowing statements are about communication between contract workers and plant management regarding safety at the plant. Please tell me whether each statement is true always, sometimes, rarely, or never as it refers to your time working for (CONTRACTOR NAME) at (HOST PLANT).

	Always true	Sometimes true	Rarely true	Never	Not sure
( ) a. Employee suggestions for improving safety are taken seriously by plant management	–1	–2	–3	–4	–5
( ) b. Employee suggestions for improving safety are taken seriously by your employer	–1	–2	–3	–4	–5
( ) c. Supervisors of (CONTRACTOR'S NAME) are receptive to reports of safety problems	–1	–2	–3	–4	–5
( ) d. Supervisors of (HOST PLANT) are receptive to reports of safety problems	–1	–2	–3	–4	–5
( ) e. Employees are encouraged to report safety problems to their plant supervisors	–1	–2	–3	–4	–5
( ) f. Employees are encouraged to report safety problems to their contractor supervisors	–1	–2	–3	–4	–5
( ) g. Employees are afraid to report safety problems to their plant supervisors	–1	–2	–3	–4	–5
( ) h. Employees are afraid to report safety problems to their contractor supervisors	–1	–2	–3	–4	–5
( ) i. Accidents that happen at your workplace get reported	–1	–2	–3	–4	–5

C2. Do you know anyone at your plant who has been treated unfairly by management because he reported a safety problem, or not?
Yes.....((_____–1
No.....((_____–2
Not sure.....((_____–3

C3. Does a labor/management safety and health committee exist at this work site, or not?
Yes.....((_____–1
(ASK Q.C4)
No.....((_____–2
Not sure.....((_____–3
(SKIP TO Q.C5)

C4. How would you rate the job done by the labor/management committee in improving safety conditions—excellent, pretty good, only fair, or poor?
Excellent.....((_____–1
Pretty good.....((_____–2
Only fair.....((_____–3
Poor.....((_____–4
Not sure.....((_____–5

C5. Are you represented by a union, or not?
Yes.....((_____–1
(ASK Q.C6)
No.....((_____–2
Not sure.....((_____–3
(SKIP TO Q.C8)

C6. Are you a union officer, or not?
Yes.....((_____–1
No.....((_____–2
Not sure.....((_____–3

C7. How would you rate the job done by your union representatives in improving safety conditions—excellent, pretty good, only fair, or poor?
Excellent.....((_____–1
Pretty good.....((_____–2
Only fair.....((_____–3
Poor.....((_____–4
Not sure.....((_____–5

C8. Is there an employee who represents your contractors' employees in working with (READ EACH ITEM) on safety issues, or not?

	Yes, employee representative	No employee representative	Not sure
( ) a. Plant management	((_____–1	_____–2	_____–3
( ) b. The contractor	((_____–1	_____–2	_____–3

IF YES TO Q.C8a OR Q.C8b ASK Q.C9. ALL OTHER SKIP TO Q.D1.

C9. How would you rate the job done by this employee representative in improving safety conditions—excellent, pretty good, only fair, or poor?
Excellent.....((_____–1
Pretty good.....((_____–2
Only fair.....((_____–3
Poor.....((_____–4
Not sure.....((_____–5

D1. The next questions deal with specific safety practices for high risk activities. For each one please tell me whether, when you worked for (CONTRACTOR'S NAME) at (HOST PLANT'S NAME) it happened always, usually, sometimes, rarely or never. [If the question is not relevant to your work, please state that it doesn't apply.]

	Always	Usually	Sometimes	Rarely	Never	Doesn't apply (Vol.)	Not sure
1. Lock out, tag out or other proper isolating procedures are followed before opening lines	((_____–1	_____–2	_____–3	_____–4	_____–5	_____–6	_____–7
2. Proper procedures are followed when starting up an operation after it has been shut down	((_____–1	_____–2	_____–3	_____–4	_____–5	_____–6	_____–7
3. Emergency response procedures are tested to make sure they are in working order	((_____–1	_____–2	_____–3	_____–4	_____–5	_____–6	_____–7
4. A good fire-fighting system is in place if needed	((_____–1	_____–2	_____–3	_____–4	_____–5	_____–6	_____–7
5. Air quality checks are performed before a worker is allowed to enter a confined work space	((_____–1	_____–2	_____–3	_____–4	_____–5	_____–6	_____–7
6. Workers are accompanied when working in a confined work area	((_____–1	_____–2	_____–3	_____–4	_____–5	_____–6	_____–7
7. You are informed if you are working with toxic materials	((_____–1	_____–2	_____–3	_____–4	_____–5	_____–6	_____–7
8. You are informed if you are working with flammable or explosive materials	((_____–1	_____–2	_____–3	_____–4	_____–5	_____–6	_____–7
9. Appropriate precautions are used when working with toxic materials	((_____–1	_____–2	_____–3	_____–4	_____–5	_____–6	_____–7
10. Appropriate precautions are used when working with flammable or explosive materials	((_____–1	_____–2	_____–3	_____–4	_____–5	_____–6	_____–7

D2. When you work(ed) for (CONTRACTOR'S NAME) at (HOST PLANT'S NAME) (are/were) you adequately informed about the emergency procedures to follow if a fire or other accident occurs, or not?
Yes, adequately informed.....((_____–1
No, not adequately informed.....((_____–2
Not sure.....((_____–3

E1. In the last year how many months did you work for a contractor at a petrochemical plant? [PROBE FOR ESTIMATE]
/_____/_____/ Months
(–)
Not sure.....((_____–1

E1a. And how many months did you work for (CONTRACTOR'S NAME) at (HOST PLANT'S NAME)? [PROBE FOR ESTIMATE]
/_____/_____/ Months
(–)
Not sure.....((_____–1

E2. The next questions are about accidents and injuries among your fellow workers for (CONTRACTOR'S NAME) working at petrochemical plants with you. *From your direct knowledge* about how often do (READ EACH ITEM) happen *at your workplace*—at least once a week, at least once a month, several times a year, at least once a year, or less often than that?

	Once a week	Once a month	Several times a year	Once a year	Less often than that	Not sure
1. Injuries that require first aid only	((_____–1	_____–2	_____–3	_____–4	_____–5	_____–6
2. Injuries that require medical help	((_____–1	_____–2	_____–3	_____–4	_____–5	_____–6
3. Injuries that result in lost time or light duty	((_____–1	_____–2	_____–3	_____–4	_____–5	_____–6
4. Fatalities	((_____–1	_____–2	_____–3	_____–4	_____–5	_____–6
5. Fires	((_____–1	_____–2	_____–3	_____–4	_____–5	_____–6
6. Accidents that could easily have caused injuries	((_____–1	_____–2	_____–3	_____–4	_____–5	_____–6
7. "Near misses"—that is, dangerous events that almost caused accidents	((_____–1	_____–2	_____–3	_____–4	_____–5	_____–6

E3. In those months this past year when you worked for a contractor at a petrochemical plant, how many times have *you* experienced (READ EACH ITEM)?

a. An injury that required first aid only ..... /_____/_____/ (-) Not sure ..... ((_____–

b. An injury that required medical help ..... /_____/_____/ (-) Not sure ..... ((_____–

c. An injury that resulted in lost time or light duty ..... /_____/_____/ (-) Not sure ..... ((_____–

IF "1" OR MORE IN Q.E3c, ASK Q.E4. OTHERS SKIP TO Q.G1.

E4. How many days were *you* out of work or on light duty as a result of an injury on the job ..... /_____/_____/ (-)

Not sure ..... ((_____–1

G1. How many hours of safety-related training have you received from (CONTRACTOR'S NAME) in the past year? *DO NOT READ LIST*

0 ..... ((_____–1
1–4 ..... _____–2
5–8 ..... _____–3
9–20 ..... _____–4
21 or more ..... _____–5
Not sure ..... _____–6

G2. How many hours of safety-related training have you received from (HOST PLANT'S NAME) in the past year? *DO NOT READ LIST*

/_____/_____/_____/ (-) Hours

Not sure ..... ((_____–1

G3. How many times in the past year have you met with representatives of (CONTRACTOR'S NAME) or (HOST PLANT'S NAME) such as supervisors, co-workers or union or employee representatives, to discuss safety issues? *DO NOT READ LIST*

/_____/_____/_____/ (-) Times

Not sure ..... ((_____–1

G4. Prior to going into any petrochemical plants as a contract worker for (CONTRACTOR'S NAME) did you receive off-site basic safety training or not?

Yes ..... ((_____–1
No ..... _____–2
Not sure ..... _____–3

G5. Prior to going to work at (HOST PLANT'S NAME) for (CONTRACTOR'S NAME) did you receive off-site pre-employment safety training, or not?

Yes ..... ((_____–1
No ..... _____–2
Not sure ..... _____–3

G6. Which of the following types of safety orientation did you receive when you worked at (HOST PLANT'S NAME)—were you (READ EACH ITEM), or not?

	Received	Did not receive	Not sure
a. Given a talk	((_____–1	_____–2	_____–3
b. Given a tour of the work area	((_____–1	_____–2	_____–3
c. Shown a film	((_____–1	_____–2	_____–3
d. Given a chance to take part in an interactive discussion	((_____–1	_____–2	_____–3
e. Tested on the safety-related materials presented to you	((_____–1	_____–2	_____–3

G7. When you worked at (HOST PLANT'S NAME) were you a member of a workplace health and safety committee that included your company's management representatives, or not?

Yes ..... ((_____–1
(ASK Q.G8)
No ..... _____–2
Not sure ..... _____–3
(SKIP TO Q.G9)

G8. How often did this committee meet in the time you worked at (HOST PLANT'S NAME)—at least weekly, monthly, quarterly, or less often than that?

At least weekly ..... ((_____–1
Monthly ..... _____–2
Quarterly ..... _____–3
Less often than that ..... _____–4
Not sure ..... _____–5

G9. How many walkaround inspections were conducted by this committee during the past year?

/_____/_____/ (-) Inspections

Not sure ..... ((_____–1

H1. The next series of questions deals with the need to obtain authorization before work is done. Before performing (READ EACH ITEM) when you worked at (HOST COMPANY'S NAME) did you have to obtain written authorization, oral authorization, both, or neither?

	Written	Oral	Both	Neither	Not sure
a. Any onsite work	((_____–1	_____–2	_____–3	_____–4	_____–5
b Confined space entry	((_____–1	_____–2	_____–3	_____–4	_____–5
c Hot work	((_____–1	_____–2	_____–3	_____–4	_____–5
d. Excavation	((_____–1	_____–2	_____–3	_____–4	_____–5
e. Work involving process	((_____–1	_____–2	_____–3	_____–4	_____–5

I1. Did your work at (HOST PLANT'S NAME) bring you into regular contact with direct-hire employees, or not?
Yes, regular contact ((_____–1
(ASK Q.D2)
No, not regular contact _____–2
Not sure _____–3(SKIP TO Q.F1)

I2. When you worked at (HOST PLANT'S NAME) did you see evidence of information about hazards being shared between (HOST PLANT'S NAME) employees and (CONTRACTOR'S NAME) employees often, sometimes, rarely, or never??
Often ((_____–1
Sometimes _____–2
Rarely _____–3
Never _____–4
Not sure _____–5

I3. When you worked at (HOST PLANT'S NAME), did you see evidence of tension or conflict between your company's employees and direct-hire workers at the plant often, sometimes, rarely, or never?
Often ((_____–1
Sometimes _____–2
Rarely _____–3
Never _____–4
Not sure _____–5

I4. Do you feel the job security of direct employees of (Plant's Name) may be threatened by the use of contract workers, or not?
Yes, threatened ((_____(
(ASK Q.I5)
No, not threatened _____–2
Not sure _____–3
(SKIP TO Q.F1)

I5. In your experience, does the concern about job security ever hamper communication between direct hire and contract workers about safety at (Plant's Name), or not?
Yes, hampers safety communication ((_____–1
No, does not hamper safety communication _____–2
Not sure _____–3

F1. How old are you *IF HESITANT, READ LIST*
18 to 20 ( )_____–1
21 to 24 _____–2
25 to 29 _____–3
30 to 34 _____–4
35 to 39 _____–5
40 to 44 _____–6
45 to 49 _____–7
50 to 64 _____–8
65 to 74 _____–9
75 and over _____–0
Not sure _____–x

F2. What is the last year of school you have completed?
No formal schooling ( )_____–1
First through 7th grade _____–2
8th grade _____–3
Some high school _____–4
High school graduate _____–5
Some college _____–6
Two-year college graduate _____–7
Four-year college graduate _____–8
Postgraduate _____–9
Trade/technical/vocational after high school* _____XXX
Not sure _____–0

F3. What is your hourly rate of pay?
$/_____/_____/. /_____/_____/
(-)
Not sure ( )_____–1

F4. Are you entitled to company paid sick leave if you get injured on your job, or not?
Yes, entitled ( )_____–1
No, not entitled _____–2
Not sure _____–3

F5. What training did you have for your current job—did you have an apprenticeship or craft training, operator training, formalized association training, in-house company training or other (vocational/technical) training? *Multiple Record*
Apprenticeship/craft training ( )_____–1
Operator training ( )_____–1
Formalized association training ( )_____–1
In-house company training ( )_____–1
Other (vocational/technical) training ( )_____–1
Not sure _____–2

F6. How long have you been working in the oil and chemical industry?
If less than one year:
/_____/_____/ Months
(-)
Or:
/_____/_____/ Years
(-)
Not sure ( )_____–1

F7. How long have you worked for you current employer?
If less than one year:
/_____/_____/ Months
(-)
Or:
/_____/_____/ Years
(-)
Not sure ( )_____–1

F8. How long did you work at (Host Plant's Name)?
6 months or less ((_____–1
7–12 months _____–2
13 months–3 years _____–3
More than 3 years _____–4
Not sure _____–5

F9. How many hours a week (do/did) you usually work at (Host Plant's Name)?
/_____/_____/_____/ Hours
(-)
Not sure ((_____–1

*Interviewer: Probe for *last* level of formal education and code into appropriate category.

F10. How often (do/did) you work more than 60 hours a week at (Plant's Name)? Is it never, rarely, occasionally, or frequently?
Never ((_____–1
Rarely _____–2
Occasionally _____–3
Frequently _____–4
Not sure _____–5

F11. How many hours a day (do/did) you usually work at (Plant's Name)?
/_____/_____/_____/ Hours
(-)
Not sure ((_____–1

F12. How often do you work more than 12 a day at (Plant's Name)? Is it never, rarely, occasionally, or frequently?
Never ((_____–1
Rarely _____–2
Occasionally _____–3
Frequently _____–4
Not sure _____–5

F13. How many hours a day do you usually work?
/_____/_____/_____/ Hours
(-)
Not sure ((_____–1

F14. Are you of Hispanic origin or descent, or not?
Yes, of Hispanic origin ((_____–1
No, not of Hispanic origin _____–2
Not sure _____–3

F15. Do you consider yourself white, black, Asian, or something else?
White ((_____–1
Black _____–2
Asian or Pacific Islander _____–3
American Indian or Alaskan _____–4
Not sure _____–5

That completes the interview. Thank you very much for your cooperation!
Time Ended: _____a.m./p.m.

[FR Doc. 90–23162 Filed 10–3–90; 8:45 am]
BILLING CODE 4510–26–M

THE NATIONAL EDUCATION GOALS PANEL

Meeting

AGENCY: The National Education Goals Panel.

ACTION: Notice of meeting.

SUMMARY: The National Education Goals Panel was established by a Joint Statement between the President and the nation's Governors dated July 31, 1990. The panel will determine how to measure and monitor progress toward achieving the National Education Goals and to report to the nation on progress

toward the goals. The Panel is composed of fourteen members: four senior-level Federal Executive Branch officials; six Governors appointed by the Chairman of the National Governors' Association in consultation with the Vice-Chairman; and four Congressional leaders (Senate Majority and Minority Leaders, House Majority and Minority Leaders), who will serve as *ex officio* members. Governor Roy Romer of Colorado is the initial Chairman.

This notice of the Panel meeting is being filed under exceptional circumstances due to the need for the Panel to begin work as soon as possible and due to difficulties in scheduling for the fourteen Panel members.

TENTATIVE AGENDA ITEMS: The Panel will consider issues related to measuring and monitoring the national education goals.

DATE: The meeting is scheduled for Tuesday, October 9, 1990, from 1:30 to 4:30 p.m.

ADDRESSE: The meeting will be held at the United States Chamber of Commerce. The street address is 1615 H Street, NW., Washington, DC.

ATTENDANCE: Please contact Charles Kolb to indicate attendance or for further information. The phone number is (202) 456–6515.

Dated: October 1, 1990.

Roger B. Porter,

Assistant to the President for Economic and Domestic Policy.

[FR Doc. 90–23714 Filed 10–3–90; 9:09 am]

BILLING CODE 312-701-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Agency Information Collection Under OMB Review.

AGENCY: National Foundation on the Arts and Humanities.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) has sent to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Comments on this information collection must be submitted on or before December 31, 1990.

ADDRESSES: Send comments to Ms. Susan Daisey, Assistant Director, Grants Office, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., room 310, Washington, DC 20506 (202–786–0494) and Mr. Daniel Chenok, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., room 3002, Washington, DC 20503 (202–395–7316).

FOR FURTHER INFORMATION CONTACT: Ms. Susan Daisey, Assistant Director, Grants Office, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., room 310, Washington, DC 20506 (202–786–0494) from whom copies of forms and supporting documents are available.

SUPPLEMENTARY INFORMATION: All of the entries are grouped into new forms, revisions, or extensions. Each entry is issued by NEH and contains the following information: (1) The title of the form; (2) the agency form number, if applicable; (3) how often the form must be filled out; (4) who will be required or asked to report; (5) what the form will be used for; (6) an estimate of the number of responses; (7) an estimate of the total number of hours needed to fill out the form. None of these entries is subject to 44 U.S.C. 3504(h).

Category: Reinstatement

Title: NEH—Division of Fellowships and Seminars—Guidelines and Application Instructions for Directors, Summer Seminars for College Teachers Program.

Form Number: 3136–0093.

Frequency of Collection: Collection occurs once yearly, according to individual program application deadline.

Respondents: Humanities research institutions and their faculty.

Use: The guidelines and application instructions provide directions for preparing narrative and budgetary parts of applications for grant funds.

Estimated Number of Respondents: 587.

Frequency of Response: Once.

Estimated Hours for Respondents to Provide Information: 3.8 per respondent.

Estimated Total Annual Reporting and Recording Burden: 2,256.5 hours.

Thomas S. Kingston,

Assistant Chairman for Operations.

[FR Doc. 90–23423 Filed 10–3–90; 8:45 am]

BILLING CODE 7536-01-M

Agency Information Collection Under OMB Review

AGENCY: National Endowment for the Humanities.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) has sent to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provision of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Comments on this information collection must be submitted on or before December 31, 1990.

ADDRESSES: Send comments to Ms. Susan Daisey, Assistant Director, Grants Office, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., room 310, Washington, DC 20506 (202–786–0494) and Mr. Daniel Chenok, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., room 3002, Washington, DC 20503 (202–395–7316).

FOR FURTHER INFORMATION CONTACT: Ms. Susan Daisey, Assistant Director, Grants Office, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., room 310, Washington, DC 20506 (202–786–0494) from whom copies of forms and supporting documents are available.

SUPPLEMENTARY INFORMATION: All of the entries are grouped into new forms, revisions, or extensions. Each entry is issued by NEH and contains the following information: (1) The title of the form; (2) the agency form number, if applicable; (3) how often the form must be filled out; (4) who will be required or asked to report; (5) what the form will be used for; (6) an estimate of the number of responses; (7) an estimate of the total number of hours needed to fill out the form. None of these entries is subject ot 44 U.S.C. 3504(h).

Title: NEH—Division of Fellowship and Seminars—Guidelines and Application Instructions for Participants, Summer Seminars for College Teachers Program.

Form Number: 3136–0096.

Frequency of Collection: Collection occurs once yearly, according to individual program application deadline.

Respondents: College faculty and independent humanities scholars.

Use: The guidelines and application instructions provide directions for preparing narrative and budgetary parts of applications for grant funds.

Estimated Number of Respondents: 4,818.

Frequency of Response: Once.

Estimated Hours for Respondents to Provide Information: 2.8 per respondent.

Estimated Total Annual Reporting and Recording Burden: 13,812 hours.

Thomas S. Kingston,

Assistant Chairman for Operation.

[FR Doc. 90–23424 Filed 10–3–90; 8:45 am]

BILLING CODE 7536-01-M

Meetings; Arts National Council

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Literature Advisory Panel (Creative Writing: Prose Fellowships Section) to the National Council on the Arts will be held on October 10–11, 1990 from 9 a.m.–6:30 p.m. and October 12 from 9 a.m.–4 p.m. in room 730 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion if this meeting will be open to the public on October 12 from 1 p.m.–4 p.m. The topic will be policy discussion.

The remaining portions of this meeting on October 10–11 from 9 a.m.–6:30 p.m. and October 12 from 9 a.m.–1 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of August 7, 1990, as amended, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any interested persons may attend, as observers, meetings, or portions thereof, of advisory panels which are open to the public.

Members of the public attending an open session of a meeting will be permitted to participate in the panel's discussions at the discretion of the chairman of the panel if the chairman is a full-time Federal employee. If the chairman is not a full-time Federal employee, then public participation will be permitted at the chairman's discretion with the approval of the full-time Federal employee in attendance at the meeting, in compliance with this guidance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Dated: September 14, 1990.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 90–23144 Filed 10–3–90; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice of permits issued.

FOR FURTHER INFORMATION CONTACT: Charles E. Myers, Permit Office, Division of Polar Programs, National Science Foundation, Washington, DC 20550.

SUPPLEMENTARY INFORMATION: On August 20, 1990, the National Science Foundation published a notice in the **Federal Register** of permit applications received. Permits were issued to the following individuals on September 26, 1990.

Diane McKnight
G.A. McFetters

Charles E. Myers,

Permit Office, Division of Polar Programs.

[FR Doc. 90–23505 Filed 10–3–90; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Biochemistry; Meeting

The National Science Foundation announces the following meeting.

NAME: Advisory Panel for Biochemistry.

DATES: Monday, Tuesday and Wednesday, October 22–24, 1990, from 8:30 am to 5:30 pm.

PLACE: National Science Foundation, room 543, Washington, DC.

TYPE OF MEETING: Closed.

CONTACT PERSON: Dr. Marcia Steinberg, Program Director, Dr. Todd Martensen, Program Director, Biochemistry Program, room 325, Telephone (202) 357–7945.

PURPOSE OF ADVISORY PANEL: To provide advice and recommendations concerning support for Biochemistry research proposals.

AGENDA: To review and evaluate research proposals as part of the selection process for awards.

REASON FOR CLOSING: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b (c), Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 90–23513 Filed 10–13–90; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Cell Biology; Meeting

The National Science Foundation announces the following meeting.

NAME: Advisory Panel for Cell Biology Program.

DATE AND TIME: October 22–24, 1990, 8:30 a.m. to 5 p.m.

PLACE: National Science Foundation, 1800 G Street, NW., Washington, DC. Conference Room 523.

TYPE OF MEETING: Part Open—Closed 10/22—8:30 a.m. to 5 p.m.; Open—10/23—12 noon to 1:30 p.m.; Closed—10/24—8:30 a.m. to 5:00 p.m.

CONTACT PERSON: Dr. Maryanna P. Henkart, Program Director, Cell Biology Program, room 321, National Science Foundation, Washington, DC 202/357–7474.

PURPOSE OF ADVISORY PANEL: To provide advice and recommendations concerning support for research in Cell Biology.

AGENDA: Open—General discussion of the current status and future plans of the Cell Biology Program.

REASON FOR CLOSING: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions 4 and 6 of Government Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 90–23514 Filed 10–13–90; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Cellular Biochemistry; Meeting

The National Science Foundation announces the following meeting:

NAME: Advisory Panel for Cellular Biochemistry.

DATE/TIME: October 25 & 26, 1990, Thursday, 8:30 a.m. to 5: p.m., Friday, 8:30 a.m. to 4: p.m.

PLACE: Georgetown Harbor Mews, 1000 29th Street NW., Washington, DC 20007, room: The Georgetown.

TYPE OF MEETING: Closed.

CONTACT PERSON: William L. Pengelly, Cellular Biochemistry Program, rm. 321–F, National Science Foundation, Washington, DC 20550, Telephone (202) 357–7987.

PURPOSE OF ADVISORY ADVISORY PANEL: To provide advice and recommendations concerning support for research in cellular biochemistry and metabolism.

AGENDA: To review and evaluate research proposals as part of the selection process for awards.

REASON FOR CLOSING: The proposals being reviewed include information of a proporietary or confidential nature, including technical information; financial data, such salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 90–23515 Filed 10–3–90; 8:45 am]

BILLING CODE 7555–01–M

Equal Opportunities in Science and Engineering Committee; Meeting

NAME: Committee on Equal Opportunities in Science and Engineering.

PLACE: National Science Foundation, 1800 G Street, NW, Washington, DC 20550, Room 540.

DATES: October 25 & 26 1990.

TIMES: Thursday, October 24: 8:30 a.m.–5 p.m. Friday, October 26: 8:30 a.m.–4:30 p.m.

TYPE OF MEETING: Open.

CONTACT: Mary M. Kohlerman, Executive Secretary of the CEOSE, National Science Foundation, room 639. Telephone Number: 202–357–7051.

PURPOSE OF MEETING: To provide advice to the Foundation on policies and activities to encourage full participation of groups, currently underrepresented in scientific, engineering, professional, and technical fields; to learn about effective methods, currently in place to motivate underrepresentated groups to pursue careers in the sciences and enginnering.

MINUTES: May be obtained from the Executive Secretary at the above address.

AGENDA: (Tentative) *October 25:* focus on person with Disabilities, and on Women; Representatives of Federal R&D Agencies; Subgroup & Full Committee Meetings. *October 26;* Full Committee Meeting; focus on Minorities; Presentation from Acting Director, NSF.

M. Rebecca Winkler,

Committee Management Office.

[FR Doc. 90–23517 Filed 10–3–90; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Genetics Program; Meeting

The National Science Foundation announces the following meeting.

NAME: Advisory Panel for Genetics.

DATE AND TIME: Sunday, Monday, and Tuesday, October 28, 29, and 30, 1990 8:30 to 5 p.m.

PLACE: the National Science Foundation, 1800 G St., NW., room 1243.

TYPE MEETING: Closed.

CONTACT PERSON: Philip Harriman, Program Director, Genetics, room 325–I, Telephone: (202) 357–9687.

PURPOSE OF ADVISORY PANEL: To provide advice and recommendations concerning support for research.

AGENDA: To review and evaluate research proposals as part of the selection process for awards.

REASON FOR CLOSING: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 90–23518 Filed 10–3–90; 8:45 am]

BILLING CODE 7555–01–M

Human Cognition and Perception Advisory Panel; Meeting

The National Science Foundation announces the following meeting.

NAME: Advisory Panel for Human Cognition & Perception.

DATE AND TIME: October 29–30, 1990, 9 a.m.–5 p.m.

PLACE: National Science Foundation, 1800 G Street, NW., room 1242, Washington, DC.

TYPE OF MEETING: Closed.

CONTACT PERSON: Dr. Joseph L. Young, Program Director, Human Cognition and Perception, room 320, National Science Foundation, Washington, DC 20550, Telephone (202) 357–9898.

MINUTES: May be obtained from contact person listed above.

PURPOSE OF MEETING: To provide advice and recommendations concerning support for research in human cognition and perception.

AGENDA: To review and evaluate research proposals as part of the selection process for awards.

REASON FOR CLOSING: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of the Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 90–23519 Filed 10–3–90; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel for Materials Research; Meeting

The National Science Foundation Announces the following meeting:

NAME: Special Emphasis Panel Meeting to review the Cornell University High Energy Synchrotron Radiation Laboratory (CHESS) 3–Year Renewal Proposal.

DATE: October 24 and 25, 1990.

LOCATION: Cornell University, Ithaca, New York.

TIME: 8 a.m. to 5 p.m., both days.

TYPE OF MEETING: Closed.

CONTACT PERSON: Dr. Adriaan M. de Graaf, Deputy Division Director, Division of Materials Research, room 408, National Science Foundation, Washington, DC 20550 Telephone: (202) 357–9794.

PURPOSE OF MEETING: To provide advice and recommendations concerning the support for the Cornell High Energy Synchrotron Radiation Laboratory.

REASON FOR CLOSING: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning

individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 90-23516 Filed 10-3-90; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Social Psychology; Meeting

The National Science Foundation announces the following meeting:

NAME: Advisory Panel for Social Psychology.

DATE AND TIME: October 25–26, 1990: 9 a.m.–5 p.m. each day.

PLACE: National Science Foundation, 1800 G Street NW., room 1243. Washington, DC 20550.

TYPE OF MEETING: Closed.

CONTACT PERSON: Dr. Jean B. Intermaggio, Program Director, Social Psychology, room 320, National Science Foundation, Washington, DC 20550. Telephone (202) 357–9485.

PURPOSE OF MEETING: To provide advice and recommendations concerning support for research in social psychology.

AGENDA: To review and evaluate research proposals as part of the selection process for awards.

REASON FOR CLOSING: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of the Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 90-23520 Filed 10-3-90; 8:45 am]

BILLING CODE 7555-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-17763; 812-7558]

Credit Suisse, BEA Associates; Application

September 27, 1990.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Credit Suisse, BEA Associates (together, the "Applicants").

RELEVANT 1940 ACT SECTIONS: Exemption requested pursuant to section 9(c) from the provisions of section 9(a).

SUMMARY OF APPLICATION: Applicants seek an order pursuant to section 9(c) permanently exempting them and all persons now or hereafter affiliated with Credit Suisse from the provisions of section 9(a) of the Act.

FILING DATE: The application was filed on June 10, 1990 and amended on August 10 and September 6, 1990.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 22, 1990, and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, c/o Fried, Frank, Harris, Shriver & Jacobson, One New York Plaza, New York, NY 10004, Attn: Edwin Heller, P.C.

FOR FURTHER INFORMATION CONTACT: Marc Duffy, Staff Attorney, at (202) 272–2511, or Max Berueffy, Branch Chief, at (202) 272–3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch or by contacting the SEC's commercial copier at (800) 231–3282 (in Maryland (301) 258–4300).

Applicants' Representations

1. Credit Suisse is a Swiss banking corporation whose principal business consists of commerical banking finance and investment banking, and accepting customer deposits. By virtue of injunctions entered against Credit Suisse and The First Boston Corporation ("FBC") (as described more fully below), Credit Suisse and its affiliates are ineligible to serve in various capacities in the investment management business. Credit Suisse intends to succeed to the investment advisory business of BEA Associates, Inc. (the "Present Adviser"). In order to complete the transaction, Credit Suisse has requested an order by the Commission pursuant to section 9(c) exempting it from section 9(a).

2. BEA Associates (the "Partnership") was formed on June 24, 1990 as a New York general partnership for the purpose of succeeding to the investment advisory business of the Present Adviser, a registered investment adviser. The Partnership intends to register as an investment adviser under the Investment Advisers Act of 1940 (the "Advisers Act").

3. The partners in the Partnership are Credit Suisse Capital Corporation ("CS Sub"), a New York corporation that is an indirect wholly-owned subsidiary of Credit Suisse formed for the purpose of acting as a general partner of the Partnership, and the Present Adviser, a New York corportation. Pursuant to an acquisition agreement dated June 24, 1990, subject to certain conditions precedent, CS Sub will purchase an undivided 80% interest in the investment advisory assets of the Present Adviser and will contribute such interest to the Partnership. In addition, the Present Adviser will contribute its remaining undivided 20% interest in such assets to the Partnership. At the time of the closing of the proposed transaction, it is contemplated that all the then-shareholders of the Present Adviser will be employees and officers of the Partnership.

4. The Present Adviser serves as an investment adviser under the Advisers Act and has been so registered since 1968. The Present Adviser serves as portfolio manager to the Diversified Bond Fund Series and the Fixed Income I Fund Series of Frank Russell Investment Company and investment adviser to the Portugal Fund, Inc.; The Chile Fund, Inc.; The Indonesia Fund, Inc.; Landmark Growth and Income Fund; Landmark Capital Growth Fund; the Alpha Prime Portfolio, Alpha Government Securities Portfolio and Pegasus Prime Portfolio of the Infinity Mutual Funds, Inc.; and The Latin America Investment Fund, Inc. (together, the "Funds"). Prior to executing new investment advisory contracts, the Partnership will solicit the approval of the Funds' Board of Directors and shareholders, with the exception of the Frank Russell Investment Company Funds for which the Present Adviser serves as a subadviser.[1] The Present

[1] In 1981, the Commission issued an order exempting certain Frank Russell Investment

Continued

Adviser expects to be the investment adviser to The Israel Capital Fund, Inc., which is registered as an investment company under the Act and has filed a registration statement under the Securities Act of 1933.

5. CS Holding owns 99.9% of the voting stock of Credit Suisse and indirectly, through a wholly-owned subsidiary, owns 44.5% of the outstanding voting common stock and 44.5% of the non-voting stock of CS First Boston, Inc. ("CS First Boston"). FBC, a wholly-owned subsidiary of CS First Boston, is registered as a broker-dealer under the Securities Exchange Act of 1934 ("Exchange Act") and as an investment adviser under the Advisers Act. By virtue of the various relationships between CS Holding, CS First Boston, FBC and Credit Suisse, it might be alleged that Credit Suisse and the Partnership, are "affiliated persons" of FBC. Solely for purposes of the application, the Applicants assume that they are "affiliated persons" of FBC within the meaning of section 2(a) (3) of the Act.

6. On November 25, 1975, the Commission commenced an action in the United States District Court for the District of Columbia, *Securities and Exchange Commission* v. *American Institute Counselors, Inc., et al.* (75 Civ. 1965), against various defendants, including Credit Suisse (which was referred to in such action as Swiss Credit Bank), alleging violations of various provisions of the federal securities laws. Credit Suisse, without admitting or denying any of the allegations of the Complaint, consented to the entry of an injunction (the "Credit Suisse Order") terminating the action against it. The Credit Suisse Order provides, among other things, that Credit Suisse shall not be involved in the sale of various gold-backed securities and gold-related items offered for sale by American Institute Counselors and certain of its affiliates.

7. In July 1976, the SEC issued two orders permanently exempting certain affiliates of Credit Suisse from the provisions of section 9(a) with respect to the Credit Suisse Order. White, Weld & Co., Inc., Investment Company Act Release Nos. 9337A (July 12, 1976) (notice and temporary order) and 9375 (July 29, 1976) (permanent order); SoGen-Swiss International Corporation, Investment Company Act Release Nos. 9338A (July 12, 1976) (notice and temporary order) and 9376 (July 29, 1976) (permanent order).

8. In December 1982, the Commission pursuant to section 9(c) permanently exempted FBC from the prohibitions of section 9(a) of the Act with respect to the 1975 Credit Suisse Order. Investment Company Act Release Nos. 12867 (December 3, 1982) (notice and temporary order), 12928 (December 27, 1982) (permanent order).

9. On May 5, 1986, the SEC filed a Complaint in the United States District Court for the Southern District of New York in a civil action entitled *Securities and Exchange Commission* v. *The First Boston Corporation* (86 Civ. 3524). The action involved certain transactions effected on January 30, 1986 by FBC, acting for its own account, in the common stock and options thereon of CIGNA Corporation ("CIGNA"). The Complaint alleged that FBC violated section 10(b) of the Exchange Act and Rule 10b–5 thereunder by purchasing for its own account securities of the CIGNA Corporation ("CIGNA") while in possession of material nonpublic information that FBC's Corporate Finance Department had received from CIGNA's management in connection with certain investment banking advice and services CIGNA had sought from FBC. On the day the Complaint was filed, FBC consented to the entry of a permanent injunction enjoining FBC from engaging in transactions, acts, practices or courses of business that constitute or would constitute violations of section 10(b) of the Exchange Act and Rule 10b–5 thereunder (the "FBC Judgment").

10. In July 1986, the Commission permanently exempted FBC from the prohibitions of section 9(a) of the Act with respect to the FBC Judgement. Investment Company Release Nos. 15086 (May 5, 1986) (notice and temporary order), 15221 (July 24, 1986) (permanent order).

11. In July 1990, the Commission permanently exempted CS First Boston and all persons now or hereafter directly or indirectly controlled by CS First Boston from the prohibitions of section 9(a) with respect to the Credit Suisse Order and the FBC Judgment. Investment Company Act Release Nos. 17561 (July 3, 1990) (notice) and 17631 (July 31, 1990) (order).

Applicants' Legal Analysis

1. Section 9(a)(2) of the Act provides that it is unlawful for any person to serve or act in the capacity of investment adviser or depositor of any registered investment company, or principal underwriter for any registered open-end investment company, if such person, by reason of any misconduct, is permanently or temporarily enjoined from engaging in any conduct or practice in connection with the purchase or sale of any security. Under section 9(a)(3), "a company, any affiliated person of which is ineligible" by reason of section 9(a)(2), is similarly ineligible.

2. Section 9(c) of the Act provides that, upon application, the SEC by order shall grant an exemption from the provisions of section 9(a) either unconditionally or on an appropriate temporary or other conditional basis, if it is established that the prohibitions of section 9(a), as applied to the applicant, are unduly or disproportionately severe or that the conduct of such person has been such as not to make it against the public interest or protection of investors to grant such application.

3. By virtue of the 1975 Credit Suisse Order, Credit Suisse is a disqualified person under section 9(a) of the Act. Because the Partnership is an "affiliated person" of Credit Suisse as such term is defined in section 2(a)(3) of the Act, the Partnership is also disqualified from serving or acting in any of the capacities set forth in section 9(a), including acting as an investment adviser to any registered investment company. Because they are affilitated with FBC, Applicants are also disqualified under section 9(a) as a result of the 1986 FBC Judgment. The Applicants have requested the permanent order specified in the application so that (A) the Partnership can act as investment adviser to the Funds and any other registered investment company and (B) there will be no uncertainty as to the effect of the Credit Suisse Order and the FBC Judgment on Credit Suisse and persons now or hereafter affiliated with Credit Suisse.

4. Applicants submit that the prohibitions of section 9(a) of the Act, to the extent applicable by virtue of the entry of the Credit Suisse Order and the FBC Judgment, would be unduly and disproportionately severe as applied to each of the partnership, Credit Suisse, and persons now or hereafter affiliated with Credit Suisse and that the conduct of Credit Suisse and FBC has been such as not to make it against the public interest or protection of investors to grant the relief requested in the

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Company funds from the provisions of section 15(a) of the Act requiring shareholder approval of the portfolio management contracts. *See* Frank Russell Investment Company, Investment Company Act Rel. Nos. 11944 (September 21, 1981) (notice) and 11966 (October 14, 1981) (order). The Applicants do not seek, and the Commission does not express, an opinion as to whether the Diversified Bond Fund Series may rely on this order in not seeking shareholder approval of its portfolio management contract with the Partnership.

application. Applicants submit that these standards have been met for the reasons stated below.

5. The conduct leading to the Credit Suisse Order and the FBC Judgment did not in any way involve any activities of the Partnership, the Funds, or either of the Applicants acting as investment adviser or any registered investment company.

6. To the extent the Partnership is subject to the prohibitions of section 9(a), it is so subject solely because it is currently an affiliated person of Credit Suisse and an affiliated person of FBC within the meaning of the Act. At the time of the alleged violations of the federal securities laws by Credit Suisse and FBC that resulted in the Credit Suisse Order and the FBC Judgment, the Partnership was not an "affiliated person" of either Credit Suisse or FBC. None of the Partnership, the Present Adviser nor any of their officers or employees participated in the conduct resulting in the Credit Suisse Order and the FBC Judgment.

7. With respect to the Credit Suisse Order, the conduct and transactions alleged in the Complaint occurred more than 14 years ago. Since 1975, Credit Suisse has not been permanently or temporarily enjoined from engaging in any of the activities listed in section 9(a)(2) of the Act.

8. With respect to the FBC Judgment, only FBC participated in the conduct alleged to have constituted a violation of the federal securities laws that resulted in the FBC Judgment. In 1986, the SEC granted FBC an order pursuant to section 9(c) exempting FBC from the provisions of section 9(a) that might otherwise be operative as a result of such judgment.

9. As described above, on five previous occasions, the SEC has issued orders granting similar relief with respect to either the Credit Suisse Order or the FBC Judgment.

10. The Applicants represent that the ability of the Partnership to serve as the Funds' investment adviser and the ability of other persons affiliated with Credit Suisse to act as principal underwriter or investment adviser in compliance with the requirements of the Act is not in any way impaired, or even apparently impaired, by the existence of the Credit Suisse Order of the FBC Judgment.

11. The Applicants represent that they acknowledge, understand and agree that the application and the Commission's issuance of the order requested by the application shall not prejudice not limit the Commission's rights in any manner with respect to any investigation, enforcement action, or proceeding under section 9(b) of the Act, based, in whole or in part, upon conduct other than that giving rise to the application.

Order Requested by the Applicants

Based on the foregoing, Applicants request that the SEC issue an order by the Commission pursuant to section 9(c) of the Act, permanently exempting Credit Suisse and any person now or hereafter affiliated with Credit Suisse, including the Partnership from the provisions of section 9(a) of the Act operative as a result of the entry of the Credit Suisse Order and the FBC Judgment.

Applicants' Conditions

If the requested exemptive relief is granted, Applicants, agree to the conditions set forth below:

1. Neither of the Applicants, now any person now or hereafter affiliated with Credit Suisse, relying upon relief granted pursuant to the application, will employ any of the equity traders, analysts or the investment banker referred to in the Complaint filed on May 5, 1986 in *Securities and Exchange Commission* v. *The First Boston Corporation*, 86 Civ. 3524 (S.D.N.Y. May 5, 1986) in any capacity related directly to the provision of investment advisory services for registered investment companies or to acting as a principal underwriter for a registered open-end investment company or to acting as a principal underwriter or depositor for a unit investment trust without first making further application to the Commission pursuant to section 9(c).

2. Neither of the Applicants, nor any person now or hereafter affiliated with Credit Suisse, relying upon the relief granted by the application, will employ any of the individuals referred to in the Complaint filed on November 25, 1975 in *Securities and Exchange Commission* v. *American Institute Counselors, Inc.*, 75 Civ. 1965 (D.D.C. Nov. 25, 1975) in any capacity related directly to the provision of investment advisory services for registered investment companies or to acting as a principal underwriter for a registered open-end investment company or as a principal underwriter or depositor for a unit investment trust without first making further application to the Commission pursuant to section 9(c).

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-23431 Filed 10-3-90; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Small Business Investment Co.; Maximum Annual Cost of Money to Small Business Concerns

13 CFR 107.302 (a) and (b) limit maximum annual Cost of Money (as defined in 13 CFR 107.3) that may be imposed upon a Small Concern in connection with Financing by means of Loans or through the purchase of Debt Securities. The cited regulation incorporates the term "Debenture Rate", which is defined elsewhere in 13 CFR 107.3 in terms that require SBA to publish, from time to time, the rate charged on ten-year debentures sold by Licensees to the public. Notice of this rate will be published upon change in the Debenture Rate.

Accordingly, Licensees are hereby notified that effective the date of publication of this Notice, and until further notice, the Debenture Rate to be used for computation of maximum cost of money pursuant to 13 CFR 107.302 (a) and (b) is 9.60 percent per annum.

13 CFR 107.302 does not supersede or preempt any applicable law imposing an interest ceiling lower than the ceiling imposed by its own terms. Attention is directed to section 308(i) of the Small Business Investment Act, as further amended by section 1 of Public Law 99-226, December 28, 1985 (99 Stat. 1744), to that law's Federal override of State usury ceilings, and to its forfeiture and penalty provisions.

(Catalog of Federal Domestic Assistance Program No. 59.011, small business investment companies)

Dated: September 26, 1990.

Bernard Kulik,

Associate Administrator for Investment.

[FR Doc. 90-23425 Filed 10-3-90; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Formulation of a Strategic Plan for Aviation

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability of FAA Strategic Plan.

SUMMARY: This notice announces the publication and availability of the Federal Aviation Administration (FAA) Strategic Plan.

FOR FURTHER INFORMATION CONTACT: Harry C. Dennis Jr., Manager Systems Requirements Branch (202) 267-3220. Address: Federal Aviation Administration, APO-120, room 934B, 800 Independence Avenue SW., Washington, DC, 20591.

AVAILABILITY OF DOCUMENT: Copies of the Strategic Plan are available on request by writing or calling Regina Morris, Office of Aviation Policy and Plans, APO-120, room 934, 800

Independence Avenue SW., Washington, DC 20591, (202) 267–3307.

SUPPLEMENTARY INFORMATION: The Strategic Plan sets policy and direction for the Federal Aviation Administration over the next 20 years in seven areas. Linked to the National Transportation Policy recently released by the Secretary of Transportation, the Stragegic Plan is an outgrowth of the same formative process of outreach and analysis and plays a key role in promoting the Department's new policies in aviation.

The FAA Strategic Plan is based on an ongoing, top management process that surveyed the long-range aviation horizon, identified future issues and opportunities, and selected a direction that will achieve the agency's desired vision of the future. The Strategic Plan sets aviation policies and broad strategies for the next two decades. Each FAA organization will be expected to supplement its program plans to carry out its strategic responsibilities, increase its focus on agency goals, objectives and strategies, and coordinate shared responsibilities.

The seven areas addressed by the Strategic Plan are summarized as follows:

1. *Aviation Safety and Security:* The FAA will maintain the highest level of aviation safety and security possible consistent with human factors, technology, and economic constraints and provide leadership which anticipates and provides solutions to potential safety problems.
2. *Capacity and Access:* The FAA will vigorously pursue optimization of the airspace and airport system.
3. *Environment:* The FAA will provide strong leadership in mitigating the adverse environmental impact of aviation on the public consistent with sound energy planning and an effective national aviation system.
4. *Human Factors:* The FAA will ensure that the role of the human in both present and future aviation systems is recognized.
5. *Internationalization:* The FAA will provide leadership in achieving international standardization in aviation: Common procedures, standards, and practices; airport design and development; design, manufacture and operation of aircraft and avionics; security; and air traffic control.
6. *Management of the Agency:* The FAA will accomplish the agency's mission by effectively managing FAA's financial, materiel, and information resources.
7. *Twenty-First Century Aviation System:* The FAA will provide strong leadership to define, design, develop, and achieve international acceptance of a global air transportation system for the next century.

The areas listed above have been selected for special emphasis. At the same time, the agency will continue to perform all current functions. The role of the Strategic Plan is to provide a unifying theme to ensure that diverse FAA activities are moving toward common objectives. As currently done, the FAA will also prepare comprehensive individual plans for future operations and investments which include all areas of FAA responsibility.

Issued in Washington, DC on September 28, 1990.

Michael C. Moffet,

Assistant Administrator for Policy, Planning, and International Aviation.

[FR Doc. 90–23445 Filed 10–3–90; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project on the Clackamas Highway (OR 212/224) between Interstate 205 (I–205) and U.S. 26 in Clackamas County, Oregon.

FOR FURTHER INFORMATION CONTACT: Elton Chang, Environmental Coordinator and Safety Programs Engineer, Federal Highway Administration, Equitable Center, suite 100, 530 Center Street NE., Salem, Oregon 97301. Telephone: (503) 399–5749.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Oregon Department of Transportation, will prepare an environmental impact statement (EIS) for a proposal to replace or widen a 12.8-mile section of Highway 212/244 in Clackamas County, Oregon to meet growing traffic demands. The Oregon 212/Oregon 224 corridor has been designated as part of an intercity "Access Oregon Highway" intended to accommodate planned growth and economic development.

The project is divided into two units. A Notice of Intent for the first unit from Interstate 205 east to Rock Creek was prepared and published in the Federal Register dated April 27, 1989.

Unit 1 would construct a new four-line, grade-separated, limited access facililty, extending the existing Milwauke Expressway four miles eastward from I–205 to Rock Creek. The I–205 interchange would be reconstructed to accommodate this and related circulation changes. Two alternative alignments are under consideration for the segment just east of the I–205 Interchange.

Unit 2 would continue east from Rock Creek through two small towns to the existing interchange at Mount Hood Highway (U.S. 26) and OR 212. Three build alternatives are under consideration. Two would construct a new four-lane, grade-separated, limited access facility on new alignments through the entire section. Of these, one would bypass the town of Damascus to the north; the other would bypass to the south. Space would be reserved in the median for two future additional lanes. The third build alternative would upgrade the existing two-lane OR 212 to a controlled access four-lane facility. In both units the No-Build Alternative will be considered with the other alternatives.

Information describing the proposed action and soliciting comments will be sent to the appropriate Federal, State, and local agencies. Public meetings have been and will be held during project development, and a public hearing will be held. Project scoping has been a continuous process, conducted in the technical, interagency and public meetings.

To ensure that the full range of issues related to the proposed action is addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

Issued on September 26, 1990.

Elton H. Chang,

Environment Coordinator/Safety Program Engineer, Oregon Division, Salem, Oregon.

[FR Doc. 90–23496 Filed 10–3–90; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

September 28, 1990.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex,

1500 Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0200.
Form Number: 5307.
Type of Review: Extension.
Title: Application for Determination for Adopters of Master or Prototype, Regional Prototype or Volume Submitter Plans.
Description: This form is filed by employers or plan administrators who have adopted a master or prototype plan approved by the IRS Regional Office or a regional prototype plan approved by the IRS District Director to obtain a ruling that the plan adopted is qualified under Internal Revenue Code sections 401(a) and 501(a). It may not be used to request a letter for a multiple employer plan.
Respondents: Businesses or other for-profit, small businesses or organizations.
Esimated Number of Respondents: 39,000.
Estimated Burden Hours Per Response/ Recordkeeping:
Recordkeeping—13 hours, 52 minutes
Learning about the law or the form—5 hours, 53 minutes
Preparing the form—9 hours, 9 minutes
Copying, assembling, and sending the form to IRS—48 minutes
Frequency of Response: On occasion
Esimated Total Recordkeeping/ Reporting Burden: 1,158,300 hours
Clearance Office: Garrick Shear (202) 535–4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 90–23470 Filed 10–3–90; 8:45 am]

BILLING CODE 4830–01–M

Public Information Collection Requirements Submitted to OMB for Review

September 28, 1990.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New.
Form Number: None.
Type of Review: New collection.
Title: 1991 Confidentiality and Privacy Study.
Description: The proposed 1990–1991 IRS/BLS "Confidentiality and Privacy Study" will investigate a number of dimensions of commonly used information collections, protection and disclosure terms, e.g., concepts of "confidentiality" and "privacy", and the potential impact of respondents' understanding and interpretation of those terms on participatory behavior in a survey research setting.
Respondents: Individuals or households, Federal agencies or employees.
Estimated Number of Respondents: 900.
Estimated Burden Hours Per Respondent: 1 hour and 30 minutes.
Frequency of Response: One-time study/studies.
Estimated Total Reporting Burden: 600 hours.
Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 90–23471 Filed 10–3–90; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 350). This document lists the following information: (1) The agency responsible for sponsoring the information collection; (2) the title of the information collection; (3) the Department form number(s), if applicable; (4) a description of the need and its use; (5) frequency of the information collection, if applicable; (6) who will be required or asked to respond; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to complete the information collection; and (9) an indication of whether section 3504(h) of Public Law 96–511 applies.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from John Turner, Veterans Benefits Administration, (23), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 (202) 233–2744.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503, (202) 395–7316. Please do not send applications for benefits to the above addressees.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before November 5, 1990.

Dated: September 28, 1990.

By direction of the Secretary.

Frank E. Lalley,

Director, Office of Information Resources Policies.

Extension

1. Veterans Benefits Administration.
2. Computation of Loan Amount for Manufactured Home Unit.
3. VA Form 26–8641a.
4. The form is completed by the lender for the purpose of showing how the loan amount is computed for manufactured home units. The information is used to properly verify the computation of the loan amount upon which the amount of guaranty is based.
5. On occasion.
6. Businesses or other for-profit.
7. 600 responses.
8. ⅙ hour.
9. Not applicable.

[FR Doc. 90–23455 Filed 10–3–90; 8:45 am]

BILLING CODE 8320–01–M

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the

following information: (1) the agency responsible for sponsoring the information collection; (2) the title of the information collection; (3) the Department form number(s), if applicable; (4) a description of the need and its use; (5) frequency of the information collection, if applicable; (6) who will be required or asked to respond; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to complete the information collection; and (9) an indication of whether section 3504(h) of Public Law 96–511 applies.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from John Turner, Veterans Benefits Administration, (23), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233–2744.

Comments and questions about the items on this list should be directed to VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395–7316. Please do not send applications for benefits to the above addresses.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before November 5, 1990.

Dated: September 28, 1990.

By direction of the Secretary.

Frank E. Lalley,

Director, Office of Information Resources Policies.

Extension

1. Veterans Benefits Administration.
2. Trainee Request for Leave—Chapter 31, Title 38, U.S.C.
3. VA Form 28–1905h.
4. VA needs the information which the veteran and trainer or authorized school official provide on this from to properly evaluate a request for leave of absence from participation in the Vocational Rehabilitation Program. This collection of information assures an accurate accounting of leave taken and allows VA to monitor the veteran's progress in the planned program of training and services.
5. On occasion.
6. Individuals or households.
7. 30,000 responses.
8. ¼ hour.
9. Not applicable.

[FR Doc. 90–23456 Filed 10–3–90; 8:45 am]

BILLING CODE 8320–01–M

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) the agency responsible for sponsoring the information collection; (2) the title of the information collection; (3) the Department form number(s), if applicable; (4) a description of the need and its use; (5) frequency of the information collection, if applicable; (6) who will be required or asked to respond; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to complete the information collection; and (9) an indication of whether section 3504(h) of Public Law 96–511 applies.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from John Turner, Veterans Benefits Administration, (23), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 (202) 233–2744.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503, (202) 395–7316. Please do not send applications for benefits to the above addresses.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before November 5, 1990.

Dated: September 28, 1990.

By direction of the Secretary:

Frank E. Lalley,

Director, Office of Information Resources Policies.

Extension

1. Veterans Benefits Administration.
2. Report of Accidental Injury in Support of Claim for Compensation or Pension.
3. VA Form 21–4176.
4. The form is used to obtain information regarding accidents resulting in the disability upon which a claim is based and to give the veteran an opportunity to provide information based on his/her own knowledge regarding the accident. The information is used in determining eligibility for benefits.
5. On occasion.
6. Individuals or households.
7. 4,400 responses.
8. ½ hour.
9. Not applicable.

[FR Doc. 90–23457 Filed 10–3–90; 8:45 am]

BILLING CODE 8320–01–M

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) the agency responsible for sponsoring the information collection; (2) the title of the information collection; (3) the Department form number(s), if applicable; (4) a description of the need and its use; (5) frequency of the information collection, if applicable; (6) who will be required or asked to respond; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to complete the information collection; and (9) an indication of whether section 3504(h) of Public Law 96–511 applies.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from John Turner, Veterans Benefits Administration, (23), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233–2744. Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503, (202) 395–395–7316. Please do not send applications for benefits to the above addresses.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before November 5, 1990.

Dated: September 28, 1990.

By direction of the Secretary.

Frank E. Lalley,

Director, Office of Information Resources Policies.

Reinstatement

1. Veterans Benefits Administration.
2. Certification of School Attendance or Termination.
3. VA Form 21–8960.

4. The form is used to verify continued school attendance in those cases where benefits are paid for dependent children based on school attendance. The information is used to determine continued eligibility based on upon school attendance.

5. On occasion.

6. Individuals or households.

7. 90,000 responses.

8. 1/12 hour.

9. Not applicable.

[FR Doc. 90-23458 Filed 10-3-90; 8:45 am]

BILLING CODE 8320-01-M

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) the agency responsible for sponsoring the information collection; (2) the title of the information collection; (3) the Department form number(s), if applicable; (4) a description of the need and its use; (5) frequency of the information collection, if applicable; (6) who will be required or asked to respond; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to complete the information collection; and (9) an indication of whether section 3504(h) of Public Law 96-511 applies.

ADDRESSES: Copies of the proposed information collected and supporting documents may be obtained from John Turner, Veterans Benefits Administration, (23), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 (202) 233-2744.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503, (202) 395-7316. Please do not send applications for benefits to the above addresses.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before November 5, 1990.

Dated: September 28, 1990.

By direction of the Secretary.

Frank E. Lalley,

Director, Office of Information Resources Policies.

Extension

1. Veterans Benefits Administration.

2. Application for Amounts Due Estates of Persons Entitled to Benefits.

3. VA Form 21-609.

4. The form is used to gather the necessary information to determine who is the proper payee of certain accrued benefits due the veteran at the date of his or her death. The information is used to determine eligibility.

5. On occasion.

6. Individuals or households.

7. 750 responses.

8. ½ hour.

9. Not applicable.

[FR Doc. 90-23459 Filed 10-3-90; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 55, No. 193
Thursday, October 4, 1990

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

TIME AND DATE: 10:00 a.m., October 15, 1990.

PLACE: 5th Floor, Conference Room, 805 Fifteenth Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: Review of open season results.

CONTACT PERSON FOR MORE INFORMATION: Tom Trabucco, Director, Office of External Affairs, (202) 523–5660.

Dated: October 1, 1990.

Francis X. Cavanaugh,

Executive Director, Federal Retirement Thrift Investment Board.

[FR Doc. 90–23587 Filed 10–2–90; 10:04 am]

BILLING CODE 6760-01-M

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

DATE AND TIME: October 25, 1990, 11:15 a.m. to 4:30 p.m., October 26, 1990, 9:00 a.m. to 4:30 p.m.

STATUS: Open.

MATTERS TO BE DISCUSSED:

Opening Remarks, Chairman Reid
Approval of June Minutes
Approval of Agenda
Guest Speaker, Patricia Breivik, Chair, National Forum on Information Literacy
Report, Hearings from Native Americans
Chairman's Report
Executive Committee Report and Recommendations
NCLIS Executive Director's Report
(October 26)
Guest Speaker, Richard Akeroyd, Connecticut State Librarian
White House Conference Activities
NCLIS Committee Reports
Long-Term NCLIS Goal Planning and Program Priorities

Special provisions will be made for handicapped individuals by calling Barbara Whiteleather (202) 254–3100, no later than one week in advance of the meeting.

FOR FURTHER INFORMATION CONTACT: Peter R. Young, Executive Director, 111 18th Street NW., (Suite 301), Washington, DC 20036, 202–254–3100.

Dated: October 1, 1990.

[FR Doc. 90–23648 Filed 10–3–90; 1:48 pm]

BILLING CODE 7527-01-M

U.S. RAILROAD/RETIREMENT BOARD

NOTICE OF PUBLIC MEETING

Notice is hereby given that the Railroad Retirement Board will hold a meeting on October 11, 1990, 9:00 a.m., at the Board's meeting room on the 8th floor of its headquarters building, 844 North Rush Street, Chicago, Illinois, 60611. The agenda for this meeting follows:

Portion Open to the Public

(1) RRB Automation Plan.
(2) Congressional Reaction to the Possible Closing of the Raleigh, North Carolina, Base Point.
(3) Incentive Awards Plan.
(4) Satellite Claims Processing Demonstration Project.
(5) Proposed Occupational Disability Physical Standards.
(6) Regulations—Parts 202 and 301, Employers Under the Railroad Retirement Act and Railroad Unemployment Insurance Act.
(7) Regulations—Part 323, Nongovernmental Plans for Unemployment or Sickness Insurance.
(8) Regulations—Part 320, Initial Determinations Under the Railroad Unemployment Insurance Act and Review of and Appeals from Such Determinations.
(9) Regulations—Parts 320 and 340, Initial Determinations Under the Railroad Unemployment Insurance Act and Reviews of and Appeals from Such Determinations; Recovery of Benefits.
(10) Regulations—Part 330, Determination of Daily Benefit Rates.
(11) Regulations—Part 203, Employees Under the Act.
(12) Regulations—Part 216, Eligibility for an Annuity.
(13) Regulations—Part 255, Recovery of Overpayments.
(14) Regulations—Part 200, General Administration.
(15) Regulations—Parts 200, 209 and 234, Railroad Employers' Reports and Responsibilities; Lump-Sum Payments.
(16) Employee Status—DJR Inc.—Legal Opinion L–90–58.
(17) Employee Status—Art Hathaway Backhoe Service.

Portion Closed to the Public

(A) Appeal from Referee's Denial of Disability Annuity, Michael L. Yankey.
(B) Appeal of Nonwaiver of Overpayment, Richard W. Hare.

The person to contact for more information is Beatrice Ezerski, Secretary to the Board, COM No. 312–751–4920, FTS No. 386–4920.

Dated: October 1, 1990.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 90–23634 Filed 10–2–90; 2:43 pm]

BILLING CODE 7905-01-M

Corrections

Federal Register
Vol. 55, No. 193
Thursday, October 4, 1990

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 64 and 98

[CGD 84-043]

RIN 2115-AB69

Portable Tanks for the Transportation of Bulk Hazardous Materials by Vessel

Correction

In rule document 90-21024 beginning on page 37406, in the issue of Tuesday, September 11, 1990, make the following correction:

§ 64.11 [Corrected]

1. On page 37410, in the first column, in § 64.11(e), in the third line, "guage" should read "gauge".

§ 98.30-5 [Corrected]

2. On page 37411, in the third column, in § 98.30-5, in the sixth line, the paragraph designation (ii) was omitted, and in the seventh line, "40 CFR" should read "49 CFR".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. 26324; Notice No. 90-20]

RIN 2120-AD33

Airworthiness Standards; Emergency Exit Provisions for Normal, Utility, Acrobatic and Commuter Category Airplanes

Correction

In proposed rule document 90-20372 beginning on page 35544, in the issue of Thursday, August 30, 1990, make the following corrections:

1. On page 35545, in the first column, in the sixth line, "December 8, 1990)" should read "December 8, 1980)".

2. On the same page, in the same column, in the first complete paragraph, in the 23rd line, "of" should read "on".

3. On the same page, in the same column, in the second complete paragraph, in the 11th line, "exists" should read "exits".

4. On the same page, in the second column, in the 15th line, "such" should read "each".

5. On page 35546, in the third column, in the 17th line, "exist" should read "exits" each time it appears..

6. On page 35548, in the first column, in the 12th line, after "airplane" insert "and".

7. On the same page, in the second column, in the 18th line, "§ 23.812(i)" should read "§ 25.812(i)".

8. On the same page, in the same column, in the 24th line, "§ 23.812(j)" should read "§ 25.812(j)".

9. On the same page, in the same column, in the 32nd line, "§ 23.812(k)" should read "§ 25.812(k)".

10. On the same page, in the same column, in the last line, "§ 23.813" should read "§ 25.813".

11. On the same page, in the third column, in the 20th line, "§ 23.813" should read "§ 25.813".

12. On page 35549, in the first column, in the last paragraph, in the third line, "§ 25.895," should read "§ 25.805,".

13. On page 35550, in the first column, under *Remaining Provisions of Proposed Rule*, in the second line, "exists" should read "exits".

§ 23.807 [Corrected]

14. On page 35551, in the third column, in § 23.807(d)(3), in the seventh line, "exist" should read "exits".

§ 23.812 [Corrected]

15. On page 35552, in the third column, in § 23.812(f)(3), "conditions" should read "condition".

§ 23.813 [Corrected]

16. On page 35553, in the second column, in § 23.813, in the sixth line from the bottom, "choose" should read "chooses".

§ 23.815 [Corrected]

17. On the same page, in the third column, in amendatory instruction 10, in the second line, "existing" was misspelled.

BILLING CODE 1505-01-D

federal register

Thursday
October 4, 1990

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Parts 91, 93

Air Traffic Control System Emergency Operation; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91 and 93

[Docket No. 26351; SFAR No. 60]

Air Traffic Control System Emergency Operation

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The Administrator of the FAA has determined that, if the sequestration provisions of the Gramm-Rudman-Hollings Act take effect on October 1, 1990, an emergency will exist requiring that immediate measures be taken in order to maintain air safety. All FAA employees, including air traffic controllers, may expect to be furloughed for a specified number of days within each pay period of work. If the furlough is implemented, such action will result in a reduction in the number of air traffic controllers available on the job and will significantly affect the FAA's ability to operate the Air Traffic Control (ATC) system and provide full ATC services. This Special Federal Aviation Regulation authorizes special provisions for the operation of the ATC system during the period that the emergency conditions exist in order to provide for the safe and orderly movement of air traffic.

EFFECTIVE DATE: September 28, 1990. The FAA will accept comments on the rule as long as it remains in force.

FOR FURTHER INFORMATION CONTACT: Mr. John M. Broderick, Program Manager, Civil Operations, ATM–100, Office of Air Traffic System Management, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267–8343. Send comments on the rule in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–204) Docket No. *26351*, 800 Independence Avenue, SW., Washington, DC 20591. Comments may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m. Any person may obtain a copy of this document by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–200, 800 Independence Avenue, SW., or by calling (202) 267–3484. Communications must identify the amendment number of the document.

SUPPLEMENTARY INFORMATION:

Comments Invited

Although this action is in the form of an emergency final rule which involves immediate flight safety throughout the United States, and, thus, was not preceded by notice and public procedure, comments are invited. Comments on the rule should be submitted to the address indicated above. Comments are specifically invited on any aspect of this emergency action which identifies a need to modify the regulation should the occasion arise in the future to operate the ATC system under emergency conditions. Commenters wishing the FAA to acknowledge receipt of their comments in response to this rule must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. *26351*." The postcard will be date/time stamped and returned to the commenter.

Air Traffic Control System Emergency Operations

Background

If necessary, the FAA will begin a furlough of its employees beginning October 1, 1990. A furlough is being considered because the agency's operating funds may be significantly reduced pursuant to the Balanced Budget and Emergency Deficit Control Act of 1985 (P.L. 99–177), commonly known as the Gramm-Rudman-Hollings Act, as amended. For every nonexempted budget account in the Federal Government, the Gramm-Rudman-Hollings Act requires that agency expenditures be cut on a uniform basis. This reduction is referred to as "sequestration". The Gramm-Rudman-Hollings Act requires that the President's sequestration order apply this uniform percentage to every "program, project, and activity" (PPA) within each nonexempted budget account.

A furlough of the extent estimated to be required will result in a daily reduction of air traffic controllers operating on the job. The partial loss of the workforce will significantly affect the FAA's ability to operate the air traffic control (ATC) system and reduce the level of ATC services the FAA is capable of providing. The level of demand on the ATC system depends on several variables, including inclement weather, availability of equipment, and military priorities for national security. For example, during good weather conditions, there is less demand on the ATC system by general aviation users. As a second example, the military may be given priority for ATC services due to the current Persian Gulf crisis.

However, the FAA is assessing current policies and developing new strategies to maximize service to the greatest number of users during a period of reduced resources. For example, ATC facility staff personnel, including staff regularly assigned responsibility for training, planning and procedures, military coordination, and special programs, will be used to augment the controller workforce.

Additionally, by utilizing traffic management procedures consistent with the pro rata reduction of services to users, an orderly movement of traffic will be better maintained. Such procedures will proportionally affect all civil users. Traffic management procedures use the published, advertised air carrier schedules to the maximum extent possible and allow the air carrier operators maximum control over their individual operations. These procedures also permit normal flight planning and the use of fuel conservation techniques by the users. Traffic management procedures can be applied to a single airport or to the system as a whole and are fully coordinated in advance, and updated as conditions at each airport change. Under normal conditions, the FAA's Air Traffic Control System Command Center has the ability to maintain an efficient flow of air traffic. With reduced ATC resources, it will be necessary to activate a more restrictive plan to reduce the number of scheduled instrument flight rules (IFR) operations and to require reservations for general aviation IFR flight activity. The two parts of this plan are designated as the National Air Traffic Reduced Complement Operations Plan and the General Aviation Reservation Program.

Under the rule adopted, the Director of the Office of Air Traffic System Management (Director) is authorized, as conditions warrant, to restrict, prohibit or permit visual flight rules (VFR) and/or IFR operations at any airport, terminal control area (TCA) or other terminal and en route airspace; to give priority at any airport to flights that are of military necessity, medical emergency flights, Presidential flights, and flights transporting critical Government employees; and to implement at any airport traffic management procedures including pro rata reduction of air carrier, commercial oeprator and general aviation operations.

The National Air Traffic Reduced Complement Operations Plan

General

When necessary, the National Air Traffic Reduced Complement Operations Plan (RCOP) will be implemented by issuance of an order of the Director. The RCOP assumes that an average of 75 percent of qualified controllers will be available for work. Flights necessary for National defense purposes and emergency flights will receive priority and will be accommodated ahead of all other flights. IFR clearances will be issued only in accordance with the provisions of the RCOP. VFR in terminal control areas (TCAs) may be restricted to arrivals and departures only; i.e., VFR flight in TCAs for purposes of transiting may not be authorized. However, restrictions will be relaxed or eliminated when sufficient ATC staffing is available to provide the requested services. Orders and information necessary to maintain the integrity of the ATC system will be disseminated, in accordance with § 91.139 of the FAR, by NOTAMs.

The RCOP

The National Air Traffic Reduced Complement Operations Plan will be the means for constraining air traffic demand to meet the anticipated reduced capacity level of the air traffic system due to Gramm-Rudman-Hollings budgetary constraints.

By controlling the flow of traffic in and out of key airports, the air traffic operating in the entire en route air traffic environment can be safely controlled or restricted as needed. Key airports, listed in Appendix 1, were designated from among the nations busiest airports since operations at those airports have the greatest impact on overall system demand. Each of the ATC facilities serving key airports developed an hourly airport acceptance rate (AAR) and an hourly airport departure rate (ADR), for the reduced staffing that may be required by the furlough action. These AAR and departure rates equate to the airports' reduced hourly capacities. The figures developed are based on best-case VFR conditions. Situations involving adverse weather conditions or other capacity limiting phenomena will be controlled by the Air Traffic Control System Command Center (ATCSCC) through normal traffic management initiatives.

The facilities were given the following specific assumptions to use in the development of hourly arrival and departure rates.

- Furloughs would begin October 1.
- Each person receives 2.5 days furlough per pay period—Equates to 25 percent reduction in staffing
- No overtime
- No annual leave or administrative leave in lieu of furlough
- No compensatory time
- No work beyond normal hours permitted/suffered
- Normal sick leave
- No on-the job training
- Use of staff to supplement operation
- Reduced operational capabilities of stand alone TRACONs such as New York and Oakland Bay will influence airport AAR and ADR.

A comparison was made between the arrival and departure rates established by the air traffic facilities established at the key airports and the Official Airline Guide (OAG). The comparison was made to determine the percentage of traffic reduction required to meet the capacity level.

To implement this RCOP, each user operating at key airports will be required to reduce its scheduled arrivals and/or departures at each key airport by a percentage of its total flights in each hour. By multiplying the percentage reduction by the number of scheduled arrivals or departures at that airport during that hour, the user determines the number of flights to be cancelled to meet the requirements of the RCOP. Cancellations are to be sent to the ATCSCC Automation Staff so that the ATC data base can be updated. This method of reducing the number of flights impacts scheduled operators in proportion to the size of their operations at each airport, through a proportional reduction of each scheduled operator's normal schedule of flights. The FAA believes that this is the most equitable means of reducing demand on the ATC system.

Operational priority will be provided to flights identified by the Department of Defense (DOD) as necessary for Desert Shield and support activities. Other DOD activities will be handled on a case-by-case basis in accordance with reasonable priority identified by DOD. Flight service stations and the National Flight Data Center will handle safety-related traffic and duties and perform other services if workload and resources permit. Service within TCAs and airport radar service areas may be terminated during the period of reduced staffing. General aviation activity will be reduced as necessary through the General Aviation Reservation (GAR) Program. International flights will not be included in the initial phase of this plan. (Domestic legs of international flights will be included.)

The terms of the National Air Traffic Reduced Complement Operations Plan may be summarized as follows:

1. This plan is applied to all operations of air carriers, commuter operators, and general aviation operators at the key airports identified. The key airports initially designated under this plan are identified in Appendix 1. The Director may add or delete key airports as necessary by NOTAM.

2. The number of hourly arrivals and departures used as the basis for reductions at the key airports is determined by averaging the general aviation historical data and the OAG data for October 1, 1990 for that airport.

3. No operator may change the designated airport of intended operation for any flight contained in the October 1, 1990, OAG.

4. Unscheduled flights such as charters, training, extra sections, ferry flights, etc., to airports designated by the RCOP will be approved on an individual basis by the ATCSCC if system capacity permits.

5. Users will determine their level of operations by taking the reduction percentage, multiplied by the number of normally scheduled arrivals or departures and subtracting the result from the number normally operated. The remainder should be rounded to the nearest whole number. Point 5 should always be rounded up. When only one scheduled arrival or departure is planned for a single hour, that operation does not need to be cancelled.

The Director may make adjustments to the plan, as necessary, 2–4 weeks after implementation. The capacities of the key airports could be adjusted up or down as necessary.

Need for Immediate Action

This action is similar to the action taken in 1981 that responded to a predicted strike by air traffic controllers. However, unlike the current budget situation, the FAA had sufficient time to respond to that strike and, therefore, was able to develop and publish for public comment a draft National Air Traffic Control Contingency Plan (NATCC) (45 FR 75096; November 13, 1980). Numerous comments were received. The NATCC was revised and updated based on those comments. The contingency plan was subsequently adopted (46 FR 15402; March 5, 1981).

It is now necessary to implement similar actions and procedures for the National Air Traffic Reduced Complement Operations Plan. While there is not sufficient time to precede this emergency rule with notice and a

public comment period, aviation industry representatives, commercial operators, and news media were invited to a meeting at FAA Headquarters in Washington, DC., on September 19, 1990, to be briefed on the plan and to provide comments to the FAA staff. A follow-up meeting of affected carriers was held on September 24, 1990, in response to a request by the Air Transport Association. The commercial entities and segments of the aviation industry impacted by this action, and the actions taken by the FAA in 1981 and being taken now are, for the most part, very similar. In adopting this plan, the FAA has considered both the comments received on the 1981 proposed plan and experience with implementation of that plan, as well as comments received at the meetings of September 19 and 24. The rule and plan adopted incorporate some of those comments. The FAA has determined that an emergency exists which is caused by the imminent action of the proposed furlough. Further, the situation dictates the immediate adoption of this regulation in the interest of safety in air commerce. Therefore, I find that further notice and public procedure are impracticable and contrary to the public interest; I further find for the same reasons that good cause exists for making this regulation effective in less than 30 days after its publication in the **Federal Register**.

Regulatory Evaluation

The FAA has determined that this rule is an emergency regulation under the provisions of Section 8 of Executive Order 12291 and paragraphs 9.k and 10.g of the Department of Transportation's Regulatory Policies and Procedures. It is impracticable for the FAA to prepare a regulatory evaluation of the rule adopted, because the safety and efficiency of the national air transportation system require immediate implementation of the rule.

Adoption of the Rule

Accordingly, the Federal Aviation Administration is amending part 91 and part 93 of the Federal Aviation Regulations, 14 CFR parts 91 and 93, by the adoption of Special Federal Aviation Regulation No. 60, as follows:

1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 31(a) of the Convention on International Civil Aviation (61 Stat. 1180); 42 U.S.C. 4321 et seq: E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

2. The authority citation for part 93 continues to read as follows:

Authority: 49 U.S.C. 1302, 1303, 1348, 1354(a), 1421(a), 1424, 2402, and 2424; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

3. Special Federal Aviation Regulation No. 60 is added to parts 91 and 93 to read as follows:

Special Federal Aviation Regulation No. 60—Air Traffic Control System Emergency Operation

1. Each person shall, before conducting any operation under the Federal Aviation Regulations (14 CFR chapter I), be familiar with all available information concerning that operation, including Notices to Airmen issued under § 91.139 and, when activated, the provisions of the National Air Traffic Reduced Complement Operations Plan available for inspection at operating air traffic facilities and Regional air traffic division offices, and the General Aviation Reservation Program. No operator may change the designated airport of intended operation for any flight contained in the October 1, 1990, OAG.

2. Notwithstanding any provision of the Federal Aviation Regulations to the contrary, no person may operate an aircraft in the Air Traffic Control System:

a. Contrary to any restriction, prohibition, procedure or other action taken by the Director of the Office of Air Traffic Systems Management (Director) pursuant to paragraph 3 of this regulation and announced in a Notice to Airmen pursuant to § 91.139 of the Federal Aviation Regulations.

b. When the National Air Traffic Reduced Complement Operations Plan is activated pursuant to paragraph 4 of this regulation, except in accordance with the pertinent provisions of the National Air Traffic Reduced Complement Operations Plan.

3. Prior to or in connection with the implementation of the RCOP, and as conditions warrant, the Director is authorized to:

a. Restrict, prohibit, or permit VFR and/or IFR operations at any airport, terminal control area, airport radar service area, or other terminal and en route airspace.

b. Give priority at any airport to flights that are of military necessity, or are medical emergency flights, Presidential flights, and flights transporting critical Government employees.

c. Implement, at any airport, traffic management procedures, that may include reduction of flight operations. Reduction of flight operations will be accomplished, to the extent practical, on a pro rata basis among and between air carrier, commercial operator, and general aviation operations. Flights cancelled under this SFAR at a high density traffic airport will be considered to have been operated for purposes of part 93 of the Federal Aviation Regulations.

4. The Director may activate the National Air Traffic Reduced Complement Operations Plan at any time he finds that it is necessary for the safety and efficiency of the National Airspace System. Upon activation of the RCOP and notwithstanding any provision of the FAR to the contrary, the Director is authorized to suspend or modify any airspace designation.

5. Notice of restrictions, prohibitions, procedures and other actions taken by the Director under this regulation with respect to the operation of the Air Traffic Control system will be announced in Notices to Airmen issued pursuant to § 91.139 of the Federal Aviation Regulations.

6. The Director may delegate his authority under this regulation to the extent he considers necessary for the safe and efficient operation of the National Air Traffic Control System.

Issued in Washington, DC, on September 28, 1990.

James B. Busey,

Administrator.

[**Note:** This appendix will not appear in the Code of Federal Regulations.]

Appendix 1—Key Airports

ATL	Atlanta Hartsfield International.
BNA	Nashville International.
BOS	Boston Logan International.
CLT	Charlotte-Douglas International.
CVG	Greater Cincinnati International.
DAL	Dallas-Love.
DAY	Cox-Dayton International.
DCA	Washington National.
DEN	Stapleton International.
DFW	Dallas-Fort Worth International.
DTW	Detroit Metropolitan Wayne County.
EWR	Newark International.
FLL	Ft. Lauderdale-Hollywood International.
HOU	William B. Hobby.
IAD	Washington-Dulles International.
IAH	Houston Intercontinental.
IND	Indianapolis International.
JFK	John F. Kennedy International.
LAX	Los Angeles International.
LGA	La Guardia.
MCO	Orlando International.
MDW	Chicago Midway.
MEM	Memphis International.
MIA	Miami International.
ORD	Chicago-O'Hare International.
PBI	Palm Beach International.
PHL	Philadelphia International.
PHX	Phoenix Sky Harbor International.
PIT	Greater Pittsburgh International.
RDU	Raleigh-Durham International.
SAN	San Diego-Lindbergh International.
SEA	Seattle-Tacoma International.
SFO	San Francisco International.
SJC	San Jose International.
SLC	Salt Lake City International.
STL	Lambert-St. Louis International.

[FR Doc. 90–23444 Filed 10–3–90; 8:45 am]

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Federal Register

Thursday
October 4, 1990

PART III

Department of Transportation

49 CFR Parts 27 and 37

Transportation for Individuals With Disabilities; Final Rule; Request for Comments

DEPARTMENT OF TRANSPORTATION

49 CFR Part 27

[Docket 47192; Notice 90-28]

RIN 2105-AB53

Transportation for Individuals With Disabilities

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Final rule; request for comments.

SUMMARY: The Department is revising its regulation to implement section 504 of the Rehabilitation Act of 1973, as amended, and section 16 of the Urban Mass Transportation Act of 1964, as amended, to be consistent with a court decision invalidating a portion of that rule. This rule is also responsive to comments on a March 1990 NPRM on this subject.

DATES: This rule is effective November 19, 1990. Comments should be received by November 5, 1990. Late-filed comments will be considered to the extent practicable.

ADDRESSES: Comments should be sent to Docket Clerk, Docket No. 47192, Department of Transportation, 400 7th Street, SW., Washington, DC 20590, Room 4107. For the convenience of persons who will be reviewing the docket, it is requested that commenters provide duplicate copies of their comments. Comments will be available for inspection at this address Monday through Friday from 9 a.m. through 5:30 p.m. Commenters who wish the receipt of their comments to be acknowledged should include a stamped, self-addressed postcard with their comments. The docket clerk will date-stamp the postcard and mail it to the commenter.

FOR FURTHER INFORMATION CONTACT: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Department of Transportation, 400 7th St., SW., Room 10424, Washington, DC 20590. Telephone 202-366-9306 (voice); 202-755-7687 (TDD). For UMTA-related questions, Susan Schruth, Office of Chief Counsel, Urban Mass Transportation Administration, 400 7th Street, SW., Washington, DC 20590, Room 9316, 202-366-4011. Taped copies of the NPRM are available on request.

SUPPLEMENTARY INFORMATION:

Background

Since 1977, the Department has issued a series of regulations to implement section 504 of the Rehabilitation Act of 1973, section 16 of the Urban Mass Transportation Act, and related statutes with respect to mass transit services for persons with disabilities. A 1977 Urban Mass Transportation Administration (UMTA) regulation required Federally-funded transit authorities to make "special efforts" to provide transportation services to such persons. In 1979, the Department replaced the 1977 rule with a regulation to require the purchase of accessible buses and the retrofit of rail mass transit systems for accessibility. In a suit brought by the transit industry, the courts found that the 1979 rule exceeded the Department's authority under section 504 by imposing undue financial burdens on transit authorities.

In 1981, in response to this court decision, the Department published an interim final rule that, in effect, revived the 1977 "special efforts" approach. Responding to concerns that service provided by transit authorities under this rule was inadequate, Congress added a new section 16(d) to the UMTA Act in 1983. The new section did not require equal access to transit for disabled persons or even comparable service. It did require the Department to issue a new rule containing minimum service criteria for service to disabled passengers.

The Department issued a rule to implement this statute in 1986. The rule contained six service criteria. In addition, to avoid the "undue burdens" problem that had resulted in the demise of the 1979 rule, the rule included a "cost cap". The cost cap provided that a transit authority did not have to spend more than three percent of its operating budget to comply with the rule, even if, as a result, the transit authority did not fully meet all the service criteria.

Last year, the U.S. Court of Appeals for the Third Circuit determined that, while it was appropriate for the Department to take costs into account in formulating the rule, the three percent cost cap mechanism was arbitrary. The court directed the Department to revise the rule consistent with its opinion. The rule remains in effect pending the promulgation of a new final rule. Under a court-specified schedule, the Department agreed that a final rule would be issued by September 21, 1990.

Meanwhile, consistent with the Department's commitment to implementing the policies embodied in the ADA, then under consideration by Congress, the Department proposed to replace the existing mass transit regulation with one that adopted these policies (55 FR 11120; March 26, 1990). This NPRM covered requirements for the acquisition of accessible vehicles, provision of supplemental paratransit service, alternative mechanisms for dealing with undue financial burdens of supplemental paratransit, and administrative provisions. The NPRM specifically noted that one alternative that the Department retained was to modify the existing section 504 rule simply by deleting the "cost cap" provision, which would fully meet the Department's legal obligations under the court decision.

On July 26, 1990, President Bush signed the ADA. As discussed in the preamble of the final rule establishing 49 CFR part 37, also published in today's **Federal Register**, the Department is issuing a final rule at this time to carry out the accessible vehicle acquisition requirements of the ADA and related requirements. That final rule also responds to comments on the March 1990 NPRM on these accessibility issues. Other issues on which comment was sought in the March 1990 NPRM (i.e., supplemental paratransit, undue financial burden, public participation) will be incorporated in a new NPRM, to be published subsequently, to implement the remainder of the ADA's transportation provisions.

The Final Rule

In view of these developments, the Department has decided to meet its obligation to the courts to modify its existing section 504 rule by issuing this final rule, amending 49 CFR part 27. This amendment has three major provisions.

A. The Cost Cap

This rule deletes the three percent "cost cap," the provision of the rule which the courts invalidated. The effect of this amendment will be to require any UMTA recipient electing to meet its part 27 obligations through a special service system to meet all service criteria, regardless of the cost of doing so.

Relatively few comments to the March 1990 NPRM addressed the issue of whether the option of removing the cost cap was a good one. Four transit authorities supported the idea, and one disability group opposed it (it appears that the latter commenter's objections are largely mooted by the enactment of the ADA, the promulgation of 49 CFR part 37, and the maintenance of effort provisions discussed below).

B. Maintenance of Effort

Under part 27, a recipient has the discretion, after following public participation procedures and obtaining UMTA approval of a significant program amendment, of switching its mode of compliance. For example, a recipient

complying with the rule through a special service system can decide, instead, to comply through an accessible bus system. Faced with an ADA requirement to purchase accessible buses and an amended part 27 that removes the cost cap, a recipient may have considerable incentive to make just such a change.

A switch of this sort, which is permitted under part 27, could have one notable negative effect. A recipient which complies with part 27, as it stands now, through an accessible bus system need not maintain any special service system. Therefore, a recipient which made this change could abandon or severely cut back its special service system, only to have to rebuild it when the supplemental paratransit requirements of the ADA become effective in early 1992. Such a course of action would be both inefficient in terms of use of resources and very disruptive of existing service patterns in the meantime. For recipients with little current accessible bus service, it would also mean a significant service gap to disabled passengers.

To prevent this negative effect, this rule adds a "maintenance of effort" provision. This provision requires any recipient which now complies with part 27 through a special service system, and wishes to switch to an accessible bus system as its mode of compliance, to maintain at least its existing level of special service pending the effective date of ADA supplemental paratransit requirements. The same requirement would apply to the special service component of a mixed system.

C. Compliance With ADA Requirements and UMTA Policy

The Department believes that, for transit providers receiving UMTA funds, compliance with requirements under ADA is essential to compliance with nondiscrimination obligations under section 504 as well. Consequently, a provision is being added to part 27 to make compliance with the Department's ADA rule a condition of receiving UMTA financial assistance. For example, an UMTA-assisted transit authority that fails, after August 25, 1990, to issue solicitations calling for new accessible buses, would be in violation of part 27 as well as the Department's ADA rule, and would be subject to funding sanctions under part 27.

This provision also tells UMTA recipients to notify UMTA if they intend to purchase inaccessible vehicles on the basis of solicitations issued before the August 26, 1990, effective date for purchase of accessible vehicles under the ADA (e.g., a solicitation issued some years ago and under which extensions or new orders of buses may be made today). This information is required to facilitate UMTA's policy concerning the participation of UMTA financial assistance in the purchase of inaccessible vehicles. This policy, consistent with the Administration's support of the ADA bills, antedated the enactment of the ADA. UMTA has taken the position, under its discretionary grant authority, that it will no longer allow UMTA funds to participate in the acquisition of inaccessible buses and other vehicles, subject to review on a case-by-case basis.

Regulatory Process Matters

This rule is not a major rule under Executive Order 12291. It is a significant rule under the Department's Regulatory Policies and Procedures. There are not sufficient Federalism impacts to warrant a Federalism assessment. The Department certifies that there are not significant economic effects on a substantial number of small entities.

The maintenance of effort provision and the provision linking compliance with the ADA to compliance with part 27 were not part of the March 1990 NPRM. The Department is issuing these provisions as final rules at this time. Without the maintenance of effort provision, the removal of the cost cap could result in the negative consequence outlined above. The removal of the cost cap is necessary at this time in order to comply with the mandate of the court. Without the link between part 27 and ADA compliance, UMTA would not have an effective sanction mechanism for any recipients which failed to comply with ADA requirement. These reasons satisfy the Administrative Procedure Act's provision that a rule may be issued without prior opportunity for comment if such an opportunity would be unnecessary, impracticable, or contrary to the public interest. However, the Department is requesting comment on these two provisions for 30 days. If comments provide sufficient reason for doing so, the Department will modify the provisions prior to the effective data of this amendment.

List of Subject in 49 CFR Part 27

Mass transportation, Handicapped.

Issued this 28th day of September 1990, at Washington, DC.

Samuel K. Skinner,

Secretary of Transportation.

For the reasons set forth in the preamble, 49 CFR part 27 is amended as follows:

PART 27—[AMENDED]

1. The authority citation for 49 CFR part 27 continues to read as follows:

Authority: Sec. 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794); sec. 16(a) of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1612(a); sec. 165(b) of the Federal-aid Highway Act of 1973 (49 U.S.C. 142 note). Subpart E is also issued under sec. 317(c) of the Surface Transportation Assistance Act of 1982 (49 U.S.C. 1612(d)).

2. The Table of Contents for subparts A and E of 49 CFR part 27 is revised to read as follows:

Subpart A—General

Sec.

Subpart E—Mass Transportation Services for Individuals With Disabilities

Sec.

Appendix to Subpart E

3. By adding a new § 27.19 thereof, to read as follows:

§ 27.19 Compliance with Americans with Disabilities Act requirements and UMTA policy.

(a) Recipients subject to this Part shall comply with all applicable requirements of the Americans with Disabilities Act (ADA) of 1990 (Pub. L. 101–336) and the Department's regulations implementing the ADA (49 CFR part 37). Such compliance is a condition of receiving Federal financial assistance from the Department of Transportation. Any recipient not in compliance with this requirement shall be subject to enforcement action under subpart F of this part.

(b) Consistent with UMTA policy, any recipient of Federal financial assistance from the Urban Mass Transportation Administration whose solicitation was made before August 26, 1990, and is for one or more inaccessible vehicles, shall provide written notice to the Secretary (e.g., in the case of a solicitation made in the past under which the recipient can order additional new buses after the effective date of this section). The Secretary shall review each case individually, and determine whether the Department will continue to participate in the Federal grant, consistent with the provisions in the grant agreement between the Department and the recipient.

§ 27.85 [Amended]

4. By removing paragraph (a)(3) from § 27.85.

§ 27.95 [Amended]

5. By removing the words "subject to the limit on required expenditures provided for in § 27.97 of this subpart" from the second sentence of paragraph (a) of § 27.95, and ending that sentence with a period after the word "section."

6. By revising § 27.97 to read as follows:

§ 27.97 Maintenance of effort.

(a) Any recipient which, before the effective date of this section, has complied with this Subpart through a special service system or a mixed system, may change its mode of compliance to an accessible bus system. Such a change is subject to the public participation and plan approval requirements of §§ 27.83(e) and 27.85 of this subpart.

(b) Any recipient which changes its mode of compliance with this subpart as provided in this section shall maintain at least the level of special service it is providing on the date of issuance of this section, pending the effective date of final rules implementing the requirements of section 223 of the Americans with Disabilities Act (Pub. L. 101–336), with respect to paratransit as a complement to fixed route service.

§ 27.99 [Removed and Reserved]

7. By removing and reserving § 27.99 thereof.

Appendix to Subpart E—[Amended]

8. By removing from the Appendix to Subpart E the paragraph beginning "Subparagraph (a)(3) also requires * * *" under the heading "Section 27.85 Submission and review of program;" the paragraphs beginning "Section 27.97 provides that recipients * * *," "If a recipient cannot provide service that fully meets the criteria * * *," "This criterion is subject to 'tradeoff' * * *" and "The service area criterion is subject to 'tradeoff' * * *" under the heading "Section 27.95 Full performance level."; the portion of the appendix entitled "Section 27.97 Limit on required expenditures;" and the portion of the appendix entitled " Section 27.99 Eligible expenses."

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BILLING CODE 4910–62–M

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49 CFR PART 37

[Docket Number 46861; Enactment]

RIN 2105–AB53

Transportation for Individuals With Disabilities

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Final rule; request for comments.

SUMMARY: The Department is taking regulatory action to implement those portions of the Americans with Disabilities Act of 1990 that require private and public transportation providers to acquire accessible vehicles beginning August 26, 1990. This rule also incorporates the Department's response to comments on the accessible motor vehicle provisions of a March 1990 notice of proposed rulemaking to amend the Department's rule implementing section 504 of the Rehabilitation Act of 1973.

DATES: This rule is effective October 4, 1990. Comments should be received by January 2, 1991. Late-filed comments will be considered to the extent practicable.

ADDRESSES: Comments should be sent to Docket Clerk, Docket No. 46861, Department of Transportation, 400 7th Street, SW., Washington, DC 20590, Room 4107. For the convenience of persons who will be reviewing the docket, it is requested that commenters provide duplicate copies of their comments. Comments will be available for inspection at his address Monday through Friday from 9 a.m. through 5:30 p.m. Commenters who wish the receipt of their comments to be acknowledged should include a stamped, self-addressed postcard with their comments. The docket clerk will date-stamp the postcard and mail it to the commenter.

FOR FURTHER INFORMATION CONTACT: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Department of Transportation, 400 7th St., SW., Room 10424, Washington, DC 20590. Telephone 202–366–9306 (voice); 202–755–7687 (TDD). For UMTA-related questions, Susan Schruth, Office of Chief Counsel, Urban Mass Transportation Administration, 400 7th Street, SW., Washington DC 20590, Room 9316. 202–366–4011. Taped copies of the final rule are available on request.

SUPPLEMENTARY INFORMATION:

Background

Since 1977, the Department has issued a series of regulations to implement section 504 of the Rehabilitation Act of 1973, section 16 of the Urban Mass Transportation Act, and related statutes with respect to mass transit services for persons with disabilities. A 1977 Urban Mass Transportation Administration (UMTA) regulation required Federally-funded transit authorities to make "special efforts" to provide transportation services to such persons. In 1979, the Department replaced the 1977 rule with a regulation to require the purchase of accessible buses and the retrofit of rail mass transit systems for accessibility. In a suit brought by the transit industry, the courts found that the 1979 rule exceeded the Department's authority under section 504 by imposing undue financial burdens on transit authorities.

In 1981, in response to this court decision, the Department published an interim final rule that, in effect, revived the 1977 "special efforts" approach. Responding to concerns that service provided by transit authorities under this rule was inadequate, Congress added a new section 16(d) to the UMTA Act in 1983. While the new section required the Department to issue a rule containing minimum service criteria for service to disabled persons, it did not require equal access to transit for disabled persons or comparable service. It did require the Department to issue a new rule containing minimum service criteria for service to disabled passengers.

The Department issued a rule to implement this statute in 1986. The rule contained six service criteria, which were used to measure adequate service to disabled passengers. In addition, to avoid the "undue burdens" problem that had resulted in the demise of the 1979 rule, the rule included a "cost cap". The cost cap provided that a transit authority did not have to spend more than three percent of its operating budget to comply with the rule, even if, as a result, the transit authority did not fully meet all the service criteria.

Last year, the U.S. Court of Appeals for the Third Circuit determined that, while it was appropriate for the Department to take costs into account in formulating the rule, the three percent cost cap mechanism was arbitrary. The court directed the Department to revise the rule consistent with its opinion. However, the entire rule, including the cost cap provision, has remained in effect pending the promulgation of a new final rule. Under a court-specified schedule, the Department agreed to issue a final rule by September 21, 1990.

Meanwhile, in connection with Congressional consideration of a bill to establish the American with Disabilities Act (ADA), the Department articulated its support of policies that would substantially improve access to mass transit services for disabled persons. These policies included requiring all new buses to be accessible, requiring supplemental paratransit service for persons who could not use the fixed route transit service that was comparable to the service for the general public, and providing a means to allow transit authorities to avoid undue financial burdens resulting from supplemental paratransit service. Given its obligation to the court, and the Department's commitment to implementing the policies embodied in the ADA, the Department published a notice of proposed rulemaking (NPRM) that proposed to replace the existing mass transit regulation with one that adopts these policies (55 FR 11120; March 26, 1990). This NPRM covered requirements for the acquisition of accessible vehicles, provision of supplemental paratransit service, alternative mechanisms for dealing with undue financial burdens of supplemental paratransit, and administrative provisions. (The NPRM did not include provisions relating to rail systems or vehicles.) The Department received 168 comments on the proposed rule, from transit providers, individuals with disabilities and groups representing them, state and local government agencies, and others.

On July 26, 1990, President Bush signed the ADA. Though the ADA, as enacted, differs in a number of details from the bills to which the Department had referred in preparing the March 1990 NPRM, the basic policy outlines of the Act are very similar to the Department's NPRM. All new vehicles must be accessible, there must be paratransit for persons who cannot use accessible mainline service, and relief may be provided where the paratransit requirement would result in undue financial burdens. There are also requirements concerning transportation services provided by public entities who do not receive Federal funds and by private entities, as well as requirements for light, rapid, commuter and intercity rail systems. The March 1990 NPRM did not propose requirements in these areas.

The ADA requires that public and private entities begin acquiring accessible vehicles after August 25, 1990. In addition, the statute requires the Department to issue final implementing regulations for all aspects of the Act for which it is responsible by July 26, 1991.

In view of these developments, the Department has decided to proceed at this time with a final rule to implement the portions of the ADA concerning the acquisition of accessible vehicles. Since covered entities must begin acquiring such vehicles after August 25, 1990, it will be useful to them and to the public to have associated regulatory requirements in place by that time. This rule also responds to comments on those portions of the March 1990 NPRM concerning the acquisition and use of accessible vehicles, since these comments are directly relevant to the provisions of the ADA which this rule implements. Although the NPRM was issued under the authority of section 504 rather than that of the ADA (which had not been enacted at the time), the NPRM's provisions paralleled the policy decisions embodied in the ADA bills. The Department believes that the comments on the March 1990 NPRM provisions are an adequate basis for making decisions on the issues involved in implementing the parallel provisions of the ADA.

The Department is not issuing a final rule at this time with respect to the supplemental paratransit and undue financial burden issues on which comment was sought in the March 1990 NPRM. In the ADA, Congress determined that a time frame of one year from the date of enactment was appropriate for the resolution of these issues, as well as on other issues related to the operation of transportation systems and the accessibility of transportation facilities. The comments to the March 1990 NPRM, in addition, indicated that, in the view of many commenters, additional work was needed to refine the supplemental paratransit proposals and to develop a workable undue burden mechanism. The ADA requires a different approach with respect to some aspects of supplemental paratransit. For these reasons, the Department intends to develop a supplemental notice of proposed rulemaking (SNPRM) on these issues, with the intent of publishing a final rule in the time frame called for by the ADA.

Nevertheless, the Department retains its obligation to the courts to modify its existing section 504 rule. In addition, it is necessary to provide guidance to UMTA grantees concerning their responsibilities during the period before the Department's final ADA regulations take effect. For these reasons, the Department is issuing a final rule amending 49 CFR part 27. This amendment will do two things. First, it will delete the three percent "cost cap," provision of the rule. Second, it will require that any UMTA grantee which changes the mode of accessible service delivery from special service to accessible bus must continue to provide special service at least at the level it now provides. This "maintenance of effort" requirement is intended to prevent a transit authority from eliminating or severely curtailing paratransit service, only to have to build it up again when the Department's rule implementing the ADA's supplemental paratransit requirement goes into effect. These amendments are discussed in greater detail in the preamble to the part 27 amendment.

In the March of 1990 NPRM, the Department noted its intention, "[b]efore publishing a final rule * * * to complete, and make available for public comment, a detailed analysis of the various options set out in this proposal." The Department commissioned a study by a consultant for this purpose. The results of that study with respect to the purchase of accessible buses are reported in this preamble. The results of the study with respect to supplemental paratransit need further refinement in light of the enactment of the ADA, which eliminated or altered some of the alternatives considered in the study. These results will be reported in conjunction with the NPRM dealing with supplemental paratransit and other ADA implementation matters.

In order to avoid confusion between the regulation implementing the ADA and the implementing regulation for section 504, the Department has decided to create a new 49 CFR part 37. We anticipate that, when part 37 is completed in 1991 with the addition of provisions concerning supplemental paratransit, undue burdens, rail service and other ADA requirements, the Department's existing section 504 rule—49 CFR part 27—will be revised to require compliance by DOT grantees with part 37's requirements.

Section-by-Section Analysis

Subpart A—General

This subpart deals with general administrative matters. When the final ADA rule is issued in 1991, this subpart will probably include additional sections on such subjects as the submission of plans and public participation.

Section 37.1 Purpose

This section states simply that the rule is intended to implement the transportation and related provisions of the ADA.

37.3 Applicability

The key point of this section is that, unlike part 27 (which is based on section 504), this rule applies to covered entities whether or not they receive Federal financial assistance. The rule applies to both public and private entities that provide transportation service, whether or not they are primarily engaged in providing such services.

Paragraph (b) clarifies the status of private entities that contract with UMT Act recipients or other public entities to provide service. This paragraph emphasizes that, in contracting for service from private entities, public entities and their contractors cannot circumvent the intent of the ADA.

In the transit area, service is provided in a variety of ways. It is not only UMTA recipients and other public entities who own and operate their own vehicles. In many cases, public entities contract for services with private entities to provide transportation services. Since this is technically neither a purchase nor a lease, the Department is concerned that entities not be confused about the necessity for compliance with ADA accessible vehicle requirements in such cases.

The definition of "operates" in the ADA makes it clear that a private entity which contracts with a public entity stands in the shoes of the public entity for purposes of determining the application of ADA requirements. This definition includes "operation of such system by a person under a contractual or other arrangement or relationship with a public entity." For example, in the absence of paragraph (b), it is possible that a public entity, instead of purchasing or leasing an accessible vehicle, could contract with a private entity, which would provide service with inaccessible vehicles. To do so would clearly conflict with the principles of the ADA. Paragraph (b) spells out that the ADA's public entity requirements for vehicle acquisition apply, as well, to private entities having a contract with a public entity to provide public transportation services.

The Department seeks additional comment on this issue, since it is possible there could be situations in which a transit operator still could avoid, through contracting out, providing accessible vehicles at the same rate it would if it were purchasing its own vehicles for the service. One option the Department is considering is to modify the definition of purchase or lease in the regulation to include contracts for services. Another option would be for the Department to establish a provision requiring that a private entity contracting to provide service for a public entity maintain at least the same ratio of accessible vehicles currently in the public entity's fleet (this ration would naturally rise as the public entity acquired more accessible vehicles).

Section 37.5 Definitions

With a few exceptions, the definitions in this section are taken directly from those in the ADA. In some cases, the ADA's definitions are elaborated. For example, the definition of "commuter authority" spells out the content of the statutory reference the ADA makes to the Rail Passenger Service Act. It should be noted that the list of entities in this definition is not exhaustive. Some entities not listed (e.g., the commuter rail operator in the Chicago area) would also be covered.

Many details in the definition of "disability" are drawn from existing regulations, such as part 27 and the Air Carrier Access Act rule (14 CFR part 382). Intercity and commuter rail cars are given simple definitions not found in, but compatible with, related definitions (e.g., of intercity and commuter rail transportation) in the Act. The term "fixed route" includes rail as well as bus vehicles or vans (UMTA program usage in the past for this term did not include rail vehicles). In addition, this definition does not include service which involves an interaction between the user and the system, beyond waiting at a stop for a bus. If, in order to receive service, a potential user must, or may, call in advance to request service, the system would be considered demand responsive rather than fixed route, even though there may be fixed starting and ending points.

For example, some systems, especially in rural areas, may operate what are sometimes called "fixed route deviation" segments, in which a vehicle begins a run at point A and ends at point B. The stops it makes in between A and B are determined by advance phone requests from users, and may cover substantial area off the most direct route between A and B. This sort of system would not be regarded as fixed route for purposes of this Part.

The definition of "solicitation" has been provided by the Department in order to clarify what actions after August 25, 1990, must result in the purchase or lease of accessible vehicles. The definition refers to the closing date for the submission of bids or offers in a procurement. Under § 37.21(a), for example, this definition requires that any new vehicles which a public entity operating a fixed route system purchases or leases for use on that system be accessible as long as the closing date for vendors to submit bids or offers to the entity for the vehicles is after August 25, 1990.

The Department has fully supported the adoption of the ADA, and DOT officials have urged transit operators to ensure that new bus orders then being developed were only for accessible buses. The Department recognizes that the definition of solicitation affects some procurements in progress. We are aware of this, but have defined the term as broadly as possible, consistent with the intent of the legislation.

The Department points out that, under an amendment to 49 CFR part 27 being issued today, any UMTA recipient procuring inaccessible vehicles in procurements not covered under this Part (e.g., under an option on a previously-awarded contract), the recipient must provide actual notice to the UMTA Administrator. MTA reserves it right under the grant agreement to terminate the grant if it determines that the purposes of the UMT Act would not be served adequately by continuing the project. UMTA will review these procurements on a case-by-case basis and determine the appropriateness of further Federal participation.

If an entity procures used or remanufactured vehicles, the applicability of ADA requirements is not keyed to solicitation dates. Rather, the ADA requires, with certain exceptions, that used or remanufactured vehicles purchases or leased after August 25, 1990, to be accessible.

Therefore, under §§ 37.23(a), 37.25(a)(2), 37.31(a)(2), 37.53(a), 37.55(a)(2), 37.83(a), and 37.85(a)(2), the Department interprets the date of the purchase or lease as the date when the entity is obligated to make the purchase or lease. This date is generally the date the entity signs the contract or is otherwise legally bound under the agreement.

The definition of Secretary includes designees: We anticipate that the UMTA Administrator will be delegated various

functions under this regulation. The text of the rule identifies the UMTA Administrator (who may also designate other UMTA officials to perform various functions) where functions assigned to the Secretary by the ADA have been delegated to the Administrator. Of course, any function which has been delegated in this way may be performed by the Secretary rather than the UMTA Administrator or other officials. For example, if a statutory function is assigned to the Secretary, and the regulation assigns that function to the Administrator, the Secretary may nonetheless perform the function on a case-by-case or regular basis, at his or her discretion.

Section 37.7 Nondiscrimination; Provision of Service

Paragraphs (a) and (b) establish general nondiscrimination provision with respect to the use of transportation services provided for the general public. They are very similar to § 27.87(c) of the Department's existing section 504 rule. The proposed retention of this provision was not the subject of comment to the March 1990 NPRM.

Paragraphs (c), (d), (e), and (f) are based on paragraphs (b)(1), (b)(3), (b)(4), and (b)(5) of § 27.87 of the Department's existing section 504 rule. The proposed retention of these provisions generated little comment. Several comments, from both transit providers and disability groups, supported the section as written.

With respect to training, one disability group suggested a more extensive training program, similar to that required under the Air Carrier Access Act regulations (14 CFR part 382) the Department issued in March 1990. A transit authority asked for dedicated Federal funds for training. The same transit authority asked for additional Federal funding to maintain spare accessible vehicles, as did one other commenter. A commenter suggested, on the subject of timeliness, that if paratransit pickup time was not within 30 minutes of schedule, that the trip should be for free, with an additional free trip for each additional 15 minutes of tardiness.

Two commenters asked for accommodations at multi-route stops for persons with vision impairments. That is, a blind person at a stop served by buses from five routes needs time to determine, and a method of determining, whether a particular bus is the right one. One of these commenters also suggested requiring the announcing of stops and the use of large-print signs. With respect to communications capacity, one commenter said that there should be such capacity for disabled persons equal to that for other persons, not just "adequate" capacity.

The Department responds to these comments as follows. In its subsequent ADA NPRM, the Department will seek comment on training requirements. The Department cannot make additional funding available for any purpose through a rulemaking proceeding. The notion of a free trip if a vehicle is 30 minutes late probably is not feasible in public transportation for people with disabilities, where traffic problems and other circumstances beyond the control of the provider can result in delays.

There are some simple, low-cost means of assisting vision impaired or other passengers who may have difficulty identifying a bus at a multi-route stop. For example, some transit authorities issue numbered or color-coded cards to passengers, who hold them up when a bus approaches. The driver tells the passenger that the correct bus has arrived when the driver sees a card pertaining to his or her route. Also, the Department regards announcing bus stops as an easy, low-cost means of assisting passengers who have difficulty in knowing where to leave the bus. There is substantial merit in routinely announcing all stops (buses in some systems have automatic recording systems that do so).

Large print signs are a good idea, and can help all passengers waiting for a bus. However, not all buses or types of bus signage are designed to accommodate them. The Department encourages transit providers to take steps of this kind, and we seek further comment on whether these or similar steps should be required as part of the final ADA rule to be published in 1991.

As long as people with disabilities can get through to an information operator or a trip scheduler as quickly as a person who is not disabled (which is what we mean by "adequate" communications capability), the intent of the statute is met. It is not necessary to have as many TDDs as voice phones, for example, so long as a hearing impaired consumer can get through on a TDD in the same amount of time as another consumer can be served on the voice phones.

An issue closely related to provision of service requirements generated more comment than any other raised in the March 1990 NPRM: How should transit providers deal with so-called non-standard or non-traditional wheelchairs or mobility devices? This category includes such things as three-wheel scooters, unusually heavy electric wheelchairs, and devices with cambered or small wheels. The NPRM proposed that the lift and securement facilities on an accessible vehicle be capable of accommodating all types of wheelchairs in common use.

Though many comments did not mention the fact, this proposal echoed a requirement of the existing 49 CFR part 27. Section 27.87 of the existing rule, "Provision of Service," provides that each recipient shall, at all times, provide service to all eligible handicapped persons, including "ensuring that vehicles and equipment are capable of accommodating all the users for which the service is designed * * *." (This provision, as discussed above, is incorporated in this regulation.) The appendix to subpart E of the part 27, which sets forth the Department's controlling interpretation of the regulatory provisions, explained this provision as follows:

> * * * a recipient which chose to comply with the rule by making its bus fleet accessible would have to ensure that the lifts, securement devices, etc. on the buses could accommodate all types of wheelchairs in common use. A lift which accommodates manual wheelchairs, but fails to accommodate common models of electric wheelchairs (including, for example, the increasingly popular three-wheel designs) does not make the buses accessible. Providing only such limited-use lifts is inconsistent with this section. (Of course, if a special service component of a mixed system transported persons whose wheelchairs could not use the lifts to all destinations in the service area, and otherwise met the service criteria, the limitation on the use of the lifts would be permissible.

This requirement has been among the requirements affecting UMTA-funded transit authorities since 1986.

In addition to the comments sent to the docket on this issue, the Department obtained information from a June 1990 conference, sponsored by the Transportation Research Institute at Oregon State University, on the subject of transportation on non-standard mobility devices. DOT staff members participated in the conference, and the preliminary report of the conference has been placed in the docket for this rulemaking.

Many commenters made the point that there are lots of different kinds of mobility devices, and that the types of devices, including very specialized devices, continue to proliferate. At the conference, a presenter provided an extensive, illustrated, typology of mobility devices, many of which are far different from the standard manual or electric wheelchair with which many transit operators are familiar.

Many commenters, principally transit providers, provided a lengthy list of problems they perceived with three-

wheel scooters. Many scooters are not readily able to be secured by some types of securement systems, and lack of attachment points to the frame to facilitate being tied down. Some models are too light-duty to stand up to stresses of the kind involved in transit accidents. Some scooters are too long for some lifts. Breakage of the seat stem and instability resulting from a high center of gravity and narrow wheelbase were mentioned by numerous commenters (presenters at the conference described the engineering basis for stability problems).

A lack of armrests to stabilize sideward motion of the occupant was another problem with some models, and other commenters mentioned a concern about injury from the non-folding steering column on some models. Some manufacturers of scooters, apparently in order to limit their liability, do not recommend or warrant their products for use on transit vehicles.

Scooters are not the only problematic type of mobility device of concern to transit providers. Device/passenger loads in the 600–700 pound weight range are too great for some lifts, and the dimensions of some devices exceed lift dimensions. Devices other than scooters lack attachment points. Some securement systems do not work well with lightweight chairs, or sports chairs with cambered wheels, power wheelchairs with four small wheels in the base, or some designs with pneumatic tires. Gurneys don't fit, and there are also problems with small stroller-type chairs used for children with disabilities.

Having to deal with the problems of all the different sorts of mobility devices created substantial concern about liability, many transit providers said. For the most part, these comments reflected fear of what could happen in the future; only two comments mentioned knowledge of actual accidents or lawsuits related to wheelchair issues. (Several commenters mentioned a lack of accident data related to the transportation of wheelchairs and wheelchair users.) On the other hand, a major transit authority that has carried three-wheel scooters for several years mentioned that it had experienced no accident or lawsuit problems, and said it was not greatly concerned about liability.

How do transit authorities now deal with the problems they see with carrying various sorts of non-standard mobility devices? First, a number of transit providers relate having found or devised securement systems that do a good job of restraining a variety of mobility devices, including scooters. These were usually four-point belt systems or combined wheel clamp and belt systems.

Second, a number of transit authorities either refuse to carry scooters and other non-standard devices or carry the devices but require the passenger to transfer out of his or her own device to a vehicle seat. This latter requirement typically is imposed when the transit provider believes it can successfully secure the mobility device but not the passenger while sitting in the device.

Based both on the comments and on a survey conducted by a presenter at the conference, it appears that a majority of transit providers (both fixed route and demand responsive) take one or another of these approaches. They do so on grounds of safety (i.e., preventing injuries to wheelchair passengers and also, to some extent, other passengers). On the other hand, a smaller number of transit providers (including some with the longest and most successful history of providing accessible bus service) said they transported scooters and other devices regularly, did not require transfer in many cases, and had not experienced the problems about which other transit agencies expressed concern.

A number of disability group commenters and individuals with disabilities argued that transit authorities should not be able to impose restrictions of this kind. (A few transit providers made similar comments as well). Such commenters supported the NPRM proposal on this point.

While not necessarily disagreeing with the idea that some devices could create problems in transit, these commenters argued that actual experience did not bear out the fears expressed by transit providers who imposed restrictions. Some commenters related personal experiences of safely riding in transit vehicles safely in "panic stop" situations while not restrained. Some commenters mentioned that there were a number of risks to passengers from transferring out of their personal devices (e.g., injury during transfer, lack of appropriate restraints in the vehicle seat, greater likelihood of injury in a vehicle seat than in a device designed for their needs). This may be particularly true for individuals who, because of the effects of their disability, have less strength or muscular control than other persons.

Other commenters, and participants in the conference, suggested that it was unreasonable, and discriminatory, to focus on risks posed by disabled passengers. For example, if a wheelchair user sitting in his wheelchair is not personally restrained, the person may be thrown about the vehicle during a rapid deceleration. A standing able-bodied passenger, who is permitted to be in the aisle without restraint, will likewise become mobile. So will large packages, infants in the arms of parents, strollers, shopping carts and other items which transit authorities do not restrict. It would be inconsistent with section 504 and the ADA, in these commenters' views, to allow transit authorities to impose restrictions on disabled passengers to reduce risks analogous to those for which no restrictions are imposed on other passengers.

Commenters had a number of suggestions on how to deal with this set of issues over the long term. Wheelchair manufacturers should be encouraged or required to work with other interested parties to create a transport-compatible wheelchair. DOT, the Department of Veterans' Affairs, the Department of Health and Human Services, the ATBCB, and other agencies should work with manufacturers, transit agencies, and consumers to develop standards for transportable wheelchairs. (For example, mobility devices could include rings or other attachment points for tie-down straps, some commenters suggested.) Ultimately, in some commenters' views, only devices meeting such standards should be required to be carried on transit vehicles. Standards for vehicles, lifts, and securement devices are needed as well, many commenters said. Additional research concerning both transportable mobility devices and vehicles and vehicle equipment is needed, commenters added.

B.C. Transit (the transit agency for Vancouver, British Columbia) videotaped eight crash test trials in which a paratransit van was run into a barrier at 20 m.p.h., carrying a scooter ridden by an anthropomorphic dummy. Briefly summarizing the results of these tests (B.C. Transit's paper on the tests is incorporated in the docket), securement systems generally prevented the scooters from leaving the securement area. However, there was substantial deformation of the scooters and considerable vertical movement of the scooters within the tie-down straps (i.e., a 10–12" rebound off the vehicle floor). Securement of the dummies was not as successful; the dummies experienced upward and rearward motion that could cause death or serious injury to human occupants.

These tests took place in relatively small, stiff (from a structural point of view) paratransit vans. Substantial deceleration forces (approximately 30–

45g) were generated. It is forces of this magnitude that resulted in the observed effects. As vehicles become larger and/or more flexible, the forces from a collision at the same speed decrease. For example, in the B.C. transit crash test, one trial involved the van crashing into a parked full-size transit bus rather than into a concrete barrier. The bus absorbed the force of the collision with greater flexibility than the concrete barriers used in the other trials, resulting in lower forces in the van. More interestingly, although there was not a scooter or dummy in the bus to test the effects on them of the forces affecting the bus, forces experienced in the bus appeared to be markedly less than those experienced in the van.

A comment from the engineering professor who organized the conference underlined the distinction between the forces at work in paratransit vehicles, full-size buses, and rail cars (where securements are typically viewed as unnecessary). Generally, the smaller and lighter the vehicle, the greater the need for restraint.

Finally, a number of comments asked for clarification of the term "in common use." Some suggested clarifications, such as wheelchairs that accounted for 98 percent of use by disabled transit riders or devices that were defined as transit compatible by transit agencies. Other comments suggested phasing in the "carry all devices in common use" requirement over five years to allow lift and securement technology to catch up with the variety of devices in use by passengers.

The Department agrees with the commenters that this is a difficult set of issues, both technically and as a matter of policy. We support the call for the development of standards for vehicles, lifts, and securement devices, as well as for the transit-compatible wheelchair. A number of efforts are now underway to develop standards in this area. Such organizations as the Canadian Standards Association, International Standards Organization, Society of Automotive Engineers, and National Highway Traffic Safety Administration are at work on standards affecting one or more aspects of this problem. The standards that the ATBCB must develop under the ADA will also have to address some of these issues. Efforts are also under way or complete in Australia and a number of European countries to develop standards. The Department is actively cooperating with other bodies in the development of standards.

The ADA requires the ATBCB standards for accessible vehicles to be complete by April 1991. These standards should resolve some of the issues (e.g., by establishing requirements for the dimensions and weight bearing capacity of lifts). Other standards may not be complete for some years, however. The Department has the responsibility of addressing these issues under section 504 and the ADA, since they pertain to the actual ability of users of mobility devices to receive transportation in a nondiscriminatory way.

The comments have suggested a number of points on which the Department would like to receive additional information and comment:

1. Many comments expressed concern about possible accident and litigation risks. What evidence is there that this potential problem is real? That is, what actual accidents or injuries have happened that can be attributed to the use of non-traditional mobility devices in transit vehicles? How do the facts of these specific accidents bear on the issues discussed above? What accident statistics or studies have been done that address these issues? Do these studies, or other evidence, demonstrate actual, as opposed to speculative, risks from allowing users of non-traditional mobility devices and the devices themselves on transit vehicles?

2. Comments asserted that it was discriminatory for transit providers to insist on securement for mobility device users that was not required for other persons using transit (e.g., standees, people with large packages, people with grocery carts or infants in strollers). By what rationale do transit providers justify restrictions on one set of persons but not another? In human factors terms, are there differences in the characteristics of various passengers or what would happen to them in an accident or panic stop situation that would justify such different requirements under a nondiscrimination statute like the ADA or section 504?

3. Commenters expressed concern that requirements that a passenger transfer to a vehicle seat could pose problems for the passenger (e.g., unsuitability of a vehicle seat for a particular disabled passenger, inadequate securement in the vehicle seat, risks of injury from the transfer or from sitting in the vehicle seat). How do transit providers address such problems? Should transfer requirements be keyed to the individual passenger (e.g., based on assessment of the relative risks to the particular passenger of transfer vs. remaining in the mobility device)? Should transfer be required even if the vehicle seat does not have securement capability for the passenger?

4. Given differences in vehicle characteristics (e.g., in probable deceleration forces in larger vs. smaller vehicles), should requirements pertaining to non-traditional mobility devices differ among vehicle types? For example, should a transit provider be able to require a transfer in a small paratransit van but not in a full size transit bus?

5. Once ATBCB standards for lifts are established, should transit providers be required to transport any device which is compatible with the dimensional and weight limits of lifts meeting the Standards? Are there other definitions of mobility devices that should be required to be transported, or that should not be required to be transported? If so, should the criterion be a general one (e.g., "in common use") or should it attempt to be more specific (e.g., a list of types or models of devices). Would it be practicable for either the Department or a third party to develop and update such a list?

6. Should transit providers be required to use securement systems of the sort that have proven effective in use by other transit providers? Should such requirements apply to new vehicles only, or should a retrofit requirement be imposed on existing accessible vehicles with less adequate securement systems?

7. Should transit vehicle operators be required to assist passengers with securement of themselves and their mobility devices, whether the devices are "standard" or non-traditional in character? If not, how can the transit provider meet its obligation to provide service to users of these devices, many of whom may be unable, by reason of their disabilities, to operate the securement systems?

The Department intends to respond to the comments on this issue, and further information we receive in response to these questions, with a provision in the July 1991 final ADA rule. By this time, of course, we will be able to take into account the ATBCB standards that are relevant to these issues. Meanwhile, the provision of service section of the regulation will continue to govern the transportation of non-traditional mobility devices.

Under this provision, each covered entity must ensure that vehicles and equipment are capable of accommodating all users for which the service is designed. As noted in the portion of the 1986 appendix quoted above, this means that lifts and securement devices must accommodate all types of mobility devices in common use (specifically including electric wheelchairs and three-wheel scooters). "In common use" is meant to be a broadly inclusive term, excluding only devices that are very unusual or very

unusually configured (e.g., gurneys, highly customized devices with unusual dimensions). If a transit provider cannot or is unwilling to provide transportation to a particular type of "common use" device on the vehicles it normally uses to provide service to persons with disabilities (e.g., because of safety concerns or because the mobility device cannot be maneuvered to a securement location), then the provider has the responsibility of arranging alternative transportation.

Subpart B—Bus, Van and Other Non—Rail Transportation Systems

The provisions in this subpart concern the acquisition of buses, vans, and other non-rail vehicles for fixed route and demand responsive systems. Requirements concerning the operation of these systems are also included. These provisions are based on the ADA and on the March 1990 NPRM.

Section 37.21 Purchase or lease of new vehicles by public entities operating fixed route systems

The NPRM provided that all new purchased or leased vehicles would have to be accessible. Under certain conditions, there could be a temporary waiver of the requirement to purchase lift-equipped buses (i.e., where lifts were not available in a timely fashion). This provision would apply only to public entities.

All the disability groups that commented, and a large number of transit providers at well, supported the proposed requirement to acquire new accessible equipment. One disability group asked that the requirement also apply to buses already in a manufacturer's inventory when a purchase agreement is made after the effective date of the requirement, and that all buses delivered a certain time (e.g., 60 days) after the requirement goes into effect be required to have lifts, regardless of when the bus was ordered or manufactured.

A few transit agencies specifically asked that no retrofit of vehicles already in their fleets be required, and three suggested that less than 100 percent fleet accessibility be required. A substantial number of transit agencies noted that they already have, or plan to have, significant numbers of accessible buses in their fleets. On the other hand, a substantial number of transit agencies argued against the accessible bus requirement, saying the paratransit provided better service, that local option should be maintained as a policy matter, that accessible buses are too expensive, or that use of lifts will delay bus schedules.

With respect to the lift waiver provision, most transit agencies that commented favored the idea of a waiver. Several suggested additional concerns. One suggested the waiver should cover lengthy delays as well as unavailability. Others suggested additional grounds for waivers, such as the unavailability of maintenance facilities or the need to use narrower buses that have difficulty accepting lifts on certain routes. Another expressed concern about the timeliness of DOT responses to waiver requests.

Among disability group commenters, several expressed opposition to the idea of a waiver, some saying that the market will catch up with the demand for lifts or that even substantial delays in procurements to acquire lifts would not harm transit agencies significantly. Other suggested limitations on waivers, such as restricting their availability to "impossibility" situations, limiting the length of the delay which would be grounds for a waiver (e.g., to over 60 days), limiting the duration of a waiver (e.g., to one year), or linking the unavailability of lift equipment which is the basis for the waiver to the date of delivery of the buses, not the date of solicitation.

One commenter also said that information about waivers should be available in accessible formats. Another suggested that transit agencies should be required to dedicate funds saved through a waiver to other accessible transit purposes. A city mayor's office suggested that there be a public hearing and comments to DOT before DOT decides whether to grant a waiver. This commenter also suggested that when a waiver is granted, the transit agency be required to acquire vehicles capable of accepting a lift (which could begin service without the lift), but that a lift be installed as soon as it becomes available.

The ADA definitely resolves many of the issues raised by the commenters (*see* ADA sections 222(a) and 225). Public entities will have to purchase and lease new accessible vehicles, with respect to any vehicle for which a solicitation is made after August 25, 1990. The ADA also includes a lift waiver provision, which spells out four conditions under which DOT may temporarily relieve a transit provider from the obligation to purchase accessible vehicles. The final rule collapses these four conditions into three. The third statutory condition—that the public entity has made good faith efforts to locate a qualified manufacturer to supply the lifts—appears to assume a direct relationship between the transit provider and the lift manufacturer. In fact, it is the bus manufacturer, rather than the transit provider directly, which would have the task of looking for a supplier of lifts to meet the transit provider's specifications. The task must still be performed, and the Department will not grant a waiver in the absence of documentation that good faith efforts have been made to obtain the lifts in a timely fashion (see paragraph (e)), but the language of this section has been altered to fit better the relationship among the parties involved.

The legislative history of the ADA specifically deals with the subject matter of one of the comments. The Report of the House Committee on Public Works and Transportation made the following statement on this subject:

> The committee understands that certain fixed route operators may be restricted from using accessible, 102" wide commuter buses for various reasons. One alternative vehicle which would meet the requirements of the Act is the 96" (wide) commuter bus, which some manufacturers are apparently unwilling to fully warranty due to structural modifications necessary to accommodate a wheelchair lift. Another alternative is the 96" (wide) suburban bus, which does not have the structural difficulties in accommodating a lift that a commuter bus does. A fixed route operator would not qualify for a waiver under this section from wheelchair lift purchase requirements for a 96" commuter bus since an acceptable alternative—the 96" wide, lift-equipped suburban bus—exists. (H. Rept. 101-485, Pt. 1, at 32-33).

Consequently, the Department will not make provision in the rule for this situation. The Department will also be guided by the Committee Report in considering any waiver request that is made on this basis.

The Department needs certain information to determine whether a transit provider meets the four statutory criteria for a waiver, "to the satisfaction of the Secretary." Consequently, a waiver request must include a copy of the written solicitation (showing that it requested lift-equipped vehicles) and written responses from lift manufacturers to the vehicle manufacturer documenting their inability to provide the lifts. Since typically bus manufacturers, rather than transit agencies, contact subcomponent manufacturers, the transit agency will include with its waiver request copies of the lift manufacturers' responses to inquiries from the bus manufacturer. The information from lift manufacturers must also indicate when the lifts would be available.

In addition, the waiver request must include copies of advertisements in trade publications and inquiries to trade

associations, seeking lifts for the buses. The public entity must also include a full justification for the assertion that a delay in the bus procurement sufficient to obtain a lift-equipped bus would significantly impair transportation services in the community. The Department is not adopting any *per se* standard of how lengthy a delay in a procurement would trigger this "significant impairment" test. It will be more difficult to obtain a waiver if a relatively short rather than relatively lengthy delay is involved. A showing of disruption to planned procurement timetables, absent a showing of significant impairment of actual transit services, would not form a basis for granting a waiver.

Any waiver granted by the Department under this provision will be a conditional waiver. The conditions are intended to ensure that the waiver provision does not create a loophole in the accessible vehicle acquisition requirement that Congress intended to impose. The ADA requires a waiver to be limited in duration, and the rule will require a termination date to be included. This date will be established on the basis of the information the Department receives concerning the availability of lifts, in the waiver request and elsewhere. In addition, so that a waiver does not become open-ended, it will apply only to a particular procurement. If a transit agency wants a waiver for a subsequent procurement, it will have to make a separate waiver request.

This includes a situation in which the delivery of buses ordered as the result of a particular solicitation is phased over a period of time. For example, suppose a transit provider orders 20 buses on October 1, 1990, and wants to take delivery of the first five buses this year, with the remaining buses to be delivered in a year. If there are no lifts available this year, the transit provider could obtain a waiver (assuming all criteria are met) for the first five vehicles. The waiver would not apply to the rest of the buses, however, and a separate waiver application would have to be made for them, if the transit provider wished to obtain them without lifts.

The purpose of the waiver provision in the ADA, as the Department construes it, is to address a situation in which, because of a potentially sudden increase in demand for lifts, lift manufacturers are unable to produce enough units to meet the demand in a timely fashion. This is, as the title of the ADA provision involved suggests, a temporary situation calling for "temporary relief." A waiver should allow a transit provider meeting the statutory standards to bring vehicles into service without lifts. But there is no reason related to the purpose of this provision of the ADA why the vehicle should remain inaccessible throughout its life. We believe that there is merit to the comment that a vehicle purchased under a waiver should be capable of accepting a lift, and that a lift should be installed as soon as it becomes available. The final rule so requires.

Section 37.23 Purchase or lease of used vehicles by public entities operating a fixed route system

The NPRM proposed that, as with new vehicles, acquisitions of used vehicles would have to be for accessible vehicles. The proposal included an exception, for situations in which a transit provider made good faith efforts to obtain accessible used vehicles but did not succeed in finding them.

There were a few comments both for and against the idea of requiring the acquisition of used accessible vehicles. Several comments suggested that the good faith efforts exception was a bad idea, and that all used vehicles should be accessible. Most of the comment, however, centered on what procedures or standards should be used for determining whether the good faith efforts test has been met. Some of these comments simply asked for clarification of what the Department meant by "good faith efforts." Others suggested that the transit provider should decide, or the UMTA Regional Administrator. A few transit providers said that asking for accessible vehicles in bid solicitations should be enough. Another suggestion was to add a requirement for an active effort to solicit bids from owners of accessible vehicles. Two disability organizations emphasized that the search for accessible vehicles should be national in scope, and suggested that a transit provider wanting to avail itself of the good faith efforts exception should have to submit a waiver request to DOT with detailed documentation of its efforts. One of these comments also said that transit providers should not be able to take advantage of the exception because accessible buses were more expensive.

The ADA requires transit agencies to purchase accessible used vehicles, providing a "demonstrated good faith efforts" exception to the requirement (see ADA section 222(b)). The reports of the Senate Committee on Labor and Human Resources and the House Committee on Education and Labor offered the following guidance on what "good faith efforts" involve:

> The phrase "demonstrated good faith efforts" is intended to require a nationwide search and not a search limited to a particular region. For instance, it would not be enough for a transit operator to contact only the manufacturer where the transit authority usually does business to see if there are accessible used buses. It involves the transit authority advertising in a trade magazine, i.e., Passenger Transport, or contacting the transit trade association, American Public Transit Association (APTA), to determine whether accessible used vehicles are available. It is the Committee's expectation that as the number of buses with lifts increases, the burden on the transit authority to demonstrate its inability to purchase accessible vehicles despite good faith efforts will become more and more difficult to satisfy. S.Rept. 101–116 at 49; H.Rept. 101–485 at 90.

Consistent with this guidance and in response to the comments, the Department is requiring that good faith efforts include specifying accessible vehicles in bid solicitations. Second, good faith efforts include a nationwide search for accessible vehicles, involving specific inquiries to other transit providers. As the report language indicates, local or regional searches for accessible used vehicles are not sufficient. Unlike the report language, the regulation will not reference contacts with manufacturers, since, typically, transit agencies obtain used vehicles from other transit agencies or used vehicle dealers, not from manufacturers. Third, good faith efforts include advertising in trade publications and contacting trade associations.

The Department considered whether a transit agency seeking to use the good faith efforts exception should have to apply to the Department for a waiver, as some comments suggested. We have decided against so requiring. First, the ADA does not mandate such a requirement, unlike the purchase of new vehicles without lifts. Second, the Department believes that requiring a DOT waiver would unnecessarily slow the procurement process. Instead, the Department will require transit agencies to retain for two years records of their good faith efforts, which must be made available to DOT and members of the public on request. This will allow the Department and interested persons to monitor the procurement activities of transit agencies. Such information could also form a basis for enforcement action.

Section 37.25 Remanufacture of vehicles and purchase or lease of remanufactured vehicles by public entities operating a fixed route system

The NPRM proposed that a vehicle remanufactured to extend its useful life

for five years or more would have to be accessible, to the maximum extent feasible. A few transit agencies opposed this requirement; a few disability groups and transit agencies supported it. One comment asked for clarification of what the term "remanufactured" meant.

Most of the comments focused on the "to the maximum extent feasible" proviso of the proposal. One commenter opposed this proviso altogether, saying that all remanufactured buses should be accessible. Several commenters said that a structural integrity standard should be used. That is, remanufacturing a bus to be accessible should be viewed as feasible as long as accessibility modifications did not unduly weaken the frame or structure of the vehicle. Some comments suggested that this determination should be made after an engineering analysis. One disability group commented that inasmuch as all full-size transit buses meeting Advanced Design Bus standards (most buses manufactured since 1979) can accommodate lifts, a structural integrity standard would require most buses to be accessible. Two transit agencies commented that in addition to considering structural integrity, the feasibility standard should consider cost. For example, if the cost of the accessibility modification would eliminate the cost advantage of remanufacturing a bus over buying a new, accessible bus, then the accessibility modifications of the remanufactured bus should not be viewed as feasible.

The ADA (section 222(c)) requires public entities that remanufacture vehicles so as to extend their useful life for five years or more, or purchase or lease such remanufactured vehicles, to acquire accessible vehicles to the maximum extent feasible. This statutory requirement is reflected in the final rule.

In response to the comment that sought clarification about the definition of a "remanufactured" vehicle, the Department is adding a definition of the term in § 37.5. Three of the Congressional committee reports considered this issue (House Committee on Public Works and Transportation, H.Rept. 101–485, Pt. 1, at 28; House Committee on Education and Labor, H.Rept. 101–485, Pt. 2, at 90; Senate Committee on Labor and Human Resources, S.Rept. 101–116 at 50). In each report, the committee noted its understanding that a remanufactured vehicle was one that had been "stripped to its frame and is then rebuilt", as opposed, for example, to an engine overhaul. The Department's definition incorporates this concept, with the wording modified to more closely describe the actual process involved (i.e., a vehicle which has been structurally restored and has had new or rebuilt major components installed to extend its service life).

With respect to the concept of "to the maximum extent feasible," the House Committee on Education and Labor and Senate Committee on Labor and Human Resources reports say that the language was inserted to clarify that the statute is not intended "to require accessibility for remanufactured vehicles if it would destroy the structural integrity of the vehicle." The House Committee on Transportation and Public Works report uses similar language: "remanufactured vehicles need only be modified to make them accessible to the extent that the modifications do not affect the structural integrity of the vehicle in a significant way."

Based on these statements and on the comments to the NPRM, the final rule provides that it is considered feasible to remanufacture a vehicle to be accessible, unless an engineering analysis indicates that specified accessibility features would have a significant adverse effect on the structural integrity of the vehicle. That it may not be economically advantageous to remanufacture a bus with accessibility modifications does not mean it is unfeasible to do so, in the engineering sense which Congress intended. Accordingly, the rule does not include economic factors among those which may be considered in determining feasibility.

The ADA adds a provision concerning remanufactured vehicles which was not part of the March 1990 NPRM. This is an exception for historic vehicles. The exception applies to a vehicle if: (1) It is of historic character, (2) it operates solely on a segment of a fixed route system which is on the National Register of Historic Places, and (3) making the vehicle accessible would significantly alter its historic character. When remanufacturing such a vehicle, the entity must incorporate only those accessibility modifications which do not significantly alter its historic character. (Historic vehicles are also subject to the "maximum extent feasible" proviso applicable to all remanufactured vehicles.) The final rule incorporates these provisions of the statute.

The Department seeks comment on whether the historic vehicle exception, as written, adequately addresses the range of situations affecting historic vehicles. For example, are there systems on which arguably historic vehicles are operated partly, but not solely, on a system segment which is on the National Register of Historic Places? Does the Department have the discretion to, and should it, change the "solely" to "substantially" or a similar term which would, to some extent, broaden this provision's coverage?

During the development of final ADA rules, the Department will work on regulations to define a vehicle of historic character. The Department seeks comment on what this definition should include. The Department also seeks information on what fixed route system segments are listed on the National Register of Historic Places. Meanwhile, the Department will consider requests to designate vehicles as historic vehicles meeting the requirements of the ADA on a case-by-case basis. In doing so, the Department will consult with the National Register of Historic Places and seek guidance from the regulations implementing the National Register program. In making determinations, the Department will rely on the recommendations of the National Register of Historic Places (which is located in the Department of the Interior).

Section 37.27 Purchase or Lease of new vehicles by public entities operating a demand responsive system for the general public

The NPRM proposed that recipients operating demand responsive systems buy accessible new vehicles. However, they need not do so if their demand responsive systems, when viewed in their entirety, provide equivalent levels of service to passengers with disabilities and other passengers. A demand responsive system was defined to include, for this purpose, a small city or rural system in which a significant portion of service was provided in a demand responsive mode, even if some service is provided on fixed routes.

Several transit agencies supported the NPRM provision as written. A smaller number of commenters, mostly disability groups but including a few transit agencies, said that all buses on fixed route components of mixed fixed route/demand responsive systems should be accessible, and that supplemental paratransit service should be provided for the fixed route components, just as with other fixed route systems.

A number of commenters also focused on the "equivalent service/when viewed in its entirety" standard for allowing demand responsive systems to acquire new inaccessible vehicles. Some of these commenters, mostly disability groups, said that this provision was unnecessary or counterproductive.

Others asked that the Department establish standards for equivalent service (e.g., in terms of service criteria). A number of transportation agencies suggested that the state agency administering the UMTA section 18 program for the state be designated to determine when the "equivalent service/when viewed in its entirety" test had been met.

One comment from a disability group emphasized that it would not be appropriate for demand responsive systems for the general public to provide separate service for disabled passengers. Rather, the comment said, service should be provided in an integrated fashion. Other disability group comments suggested that the rule include a DOT prior approval procedure for demand responsive systems seeking to meet the "equivalent service/when viewed in its entirety" test and a complaint procedure for alleged violations of the requirements.

Other transit agency comments mentioned problems that would occur if accessibility requirements apply to small vans, cars, or taxis (e.g., inability to put a lift on a taxi; reduction of seating capacity of vans if lifts are installed). Not all section 18 recipients operate demand responsive systems, another commenter pointed out; the commenters said that small operators should have greater flexibility regardless of the program from which they received UMTA funds. Small rural systems should be excepted from the requirement altogether, another agency suggested.

The ADA (section 224) provides that a public entity operating a demand responsive system must purchase or lease accessible new vehicles, for which a solicitation is made after August 25, 1990, unless the system, when viewed in its entirety, provides a level of service to individuals with disabilities, including individuals who use wheelchairs, equivalent to the level of service provided to individuals without disabilities. The final rule incorporates this requirement.

As the Department construes the ADA, a demand responsive system is one that meets the essential definition of such service—that a user must request transportation service before it is rendered (see H. Rept. 101–485, Pt. 2, at 94; S.Rept. 101–116 at 54). This section applies only to such service and vehicles used in it. A vehicle used in fixed route service (even if as part of a mixed fixed route/demand responsive system) must meet the requirements of other sections for the acquisition of fixed route vehicles.

Comments asked for clarification of the concept of equivalent service, some suggesting the use of service criteria like those of the existing regulation (49 CFR part 27) for paratransit service. The legislative history the ADA is in accord with this suggestion. The "when viewed in its entirety/equivalent service" language means that "when all aspects of a transportation system are analyzed, equal opportunities for each individual with a disability to use the transportation system must exist." (H. Rept. 101–184, Pt. 2, at 95; S.Rept. 101–116 at 54). For example, both reports said, "the time delay between a phone call to access the demand responsive system and pick up the individual is not to be greater because the individual needs a lift or ramp or other accommodation to access the vehicle." (*Id.*) The House Public Works and Transportation Committee report added that

> (t)he standard of a system viewed in its entirety providing equivalent service is met when an operator has, or has access to, a vehicle (including a vehicle operated in conjunction with a portable boarding assistance device) which is readily accessible to and usable by individuals with disabilities to meet the needs of such individuals on an "on-call" basis. Essentially, when all aspects of the system are analyzed, an individual with a disability must have an equivalent opportunity to use the system. (H.Rept. 101–85, Pt. 1, at 32).

In response to the comments and Congressional guidance, the rule sets forth several "service criteria" standards. These standards, which concern service area, response time, fares, hours and days of service, trip purpose restrictions, information and reservations capability, and other capacity constraints, are not absolute standards. For example, they do not say that anyone—with or without a disability—must be picked up a given number of hours after making a call for service. But they do require service to be equivalent for all passengers, whether or not they have a disability. If the system provides service to non-disabled passengers within four hours of a call for service, then passengers with disabilities must receive accessible service in four hours.

As suggested by another comment, this service must be integrated to the maximum extent feasible. It is not consistent with the ADA to provide separate service for disabled and non-disabled passengers, both of whom are, after all, members of the general public. Both, to the maximum extent feasible, should be served by the same vehicles, trips etc.

With respect to program monitoring, each demand responsive provider must certify to the State agency having responsibility for the UMTA section 18 program that it meets the equivalency test of this section and therefore is eligible to purchase inaccessible vehicles. For UMT Act recipients, the rule reflects present practice for certifications. The State agencies in question are a logical place for non-UMTA recipients to file their certifications as well. Despite the certification, the State office (or UMTA, which may review certifications on file with the State) may determine that the equivalency test has not been met, and that the entity may not acquire inaccessible vehicles.

A certification may be submitted in connection with a particular procurement. Alternatively, it may be submitted in advance (e.g., for UMTA section 18 recipients, at a convenient time in the grant application process). No certification is valid for more than a year, however. A valid certification must be on file before a public entity acquires an inaccessible vehicle.

The rule also states that the waiver mechanism concerning lifts (see § 37.21) will apply to demand responsive systems as well as fixed route systems. The Committee reports on this provision emphasized that this waiver provision was intended to apply to demand responsive systems (H.Rept. 101–485, Pt. 2, at 95; S.Rept. 101–116 at 54).

With respect to systems using small vehicles (e.g., taxis, small vans), the Department is aware, as commenters indicated, that there may be difficulty in obtaining small accessible vehicles. The ADA makes an exception to the accessible vehicle acquisition requirement for private entities providing specified transportation services, with respect to automobiles and vans with a seating capacity of less than eight persons (*see* Section 304(b)(3)). However, there is no such statutory exception for public entities providing either fixed route or demand responsive service. It would not be appropriate for the Department to create an exception where Congress did not. We suggest that demand responsive systems acquire sufficient accessible vehicles to meet the equivalency test, thereby allowing them to acquire additional vehicles that were not equipped with lifts or ramps.

Section 37.29 Purchase of Vehicles by Private Entities

This provision does not have a counterpart in the March 1990 NPRM, which concerned itself only with

recipients of UMTA financial assistance. The section implements Sections 302(b)(2)(B) and (C) and 304(b) and (c) of the ADA, insofar as these sections concern the acquisition of vehicles by private entities.

These provisions, address a "private entity which is not primarily engaged in the business of transporting people." The "primarily engaged" test distinguishes between entities whose principal business is providing transportation (e.g., a charter bus company) and entities whose provision of transportation is tangential to their main business (e.g., airport shuttles operated by hotels, customer and employee shuttle services operated by private companies or shopping centers, shuttle operations of recreational facilities such as stadiums, ski resorts, zoos, and amusement parks. See H.Rept. 100-485, Pt. 1, at 38). It is also likely that many social service agencies and other parties which receive UMTA section 16(b)(2) funds would fall into this category.

At various points, this section applies different requirements depending on whether vehicles with a certain seating capacity are involved. As some commenters to the March 1990 NPRM pointed out, installation of lifts and wheelchair securement positions in vehicles may affect the number of persons who can actually travel in a vehicle at the same time. When the rule refers to seating capacity (e.g., with respect to a vehicle with a seating capacity in excess of 16 passengers, including the driver), the Department construes this to mean the capacity of the vehicle for passenger seating prior to accessibility modifications. Therefore, if a van can be ordered from the manufacturer with over 16 seats, it is a vehicle with a seating capacity in excess of 16 passengers, even if, after being modified to include a lift and wheelchair securement positions, the van can carry only 10 or 12 persons at a time.

Many UMTA section 16(b)(2) recipients often seek assistance for obtaining vehicles with a 16 seat or lower capacity. To the extent that these recipients fall under this section, they would not be required to purchase accessible vehicles by the ADA.

This section requires acquisition of accessible vehicles unless the system, when viewed in its entirety, provides service to individuals with disabilities equivalent to that provided other persons. For the reasons discussed in connection with § 35.29, the Department approaches this requirement by requiring equivalent service with respect to a number of service characteristics to meet this test. The one difference between the criteria in this section and those in § 35.29 is that, for fixed route service, schedules/headways is substituted for response time. This is because the concept of response time does not apply in the fixed route context, where the key timing factor is how long a disabled passenger has to wait between vehicles, as contrasted with a non-disabled passenger.

Two provisions of this section, concerning acquisition of vans with a capacity of fewer than eight persons and the acquisition of rail passenger cars by private entities, do not begin to apply until February 25, 1992 (i.e., 19 months from the effective date of the ADA). This results from what may be an oversight in the drafting of the legislation, which failed to except the corresponding section of the ADA from the general 18 month effective date for title III of the statute. If a technical correction is passed by Congress, the Department will amend these provisions accordingly.

The provision of this section concerning remanufactured rail passenger cars, and the related provision concerning historic rail cars, are taken directly from the ADA. The feasibility language of this provision is based on the same rationale as the feasibility language of other provisions of the rule concerning historic vehicles.

Section 37.31 Interim Standards for Accessible Vehicles

The ADA requires the Department to adopt standards for accessible vehicles as part of its final ADA rules. The standards, in turn, are to be based on guidelines developed by the Architectural and Transportation Barriers Compliance Board (ATBCB), which are to be issued nine months from the statute's effective date. Pending the issuance of the final standards, this section sets forth requirements for what constitutes an accessible vehicle. This section will be replaced by the final standards as part of the projected July 1991 final ADA rule.

There are three basic requirements for vehicle accessibility. First, a long-standing UMTA regulation (49 CFR 609.15) prescribes a series of requirements for buses (e.g., concerning priority seating signs, interior handrails and stanchions, floor and step surfaces, lighting, fare collection, and destination and route signs). These requirements will apply to buses acquired by entities subject to the ADA, whether or not they receive UMTA funds. A few comments supported reference to Part 609; none opposed it.

Second, to be accessible, a vehicle needs a lift or other level change mechanism (e.g., a ramp). It must also have sufficient clearances to allow a wheelchair user to reach a securement location. This point is obvious from the statute. Third, there must be at least one securement location. Some comments to the March NPRM urged that the Department require at least two securement locations. The Department believes that, at least on full size transit buses, more than one securement location is advisable. However, the legislative history of the ADA indicates that the number of spaces made available for wheelchairs is a determination, resting on a number of factors, that should be left up to the transit provider (see H.Rept. 101-485, Pt. 2, at 88; S. Rept. 101-116 at 54).

As indicated by a large number of comments on the NPRM's "provision of service" requirements for wheelchairs in common use, there is substantial concern by interested parties about standards for wheelchair lifts and securement devices. One of these comments was a set of recommended interim standards from the ATBCB. The Department is not including any interim standards in this rule, believing that the details of these standards require additional consideration. The National Highway Traffic Safety Administration (NHTSA) and UMTA are both working on projects that bear on the development of lift and securement standards, and work on related standards by such bodies as the Canadian Standards Association and International Standards Organization is also under way. Between now and the publication of a final ADA rule, the Department will work with the ATBCB and other concerned organizations to bring this work together and develop as complete and reasonable a set of standards as possible.

Subpart C—Rapid and Light Rail Systems

The requirements for vehicle acquisition for rapid and light rail systems parallel those for buses, vans and other vehicles. The regulatory requirements closely follow the statute, with the Department exercising its discretion on such issues as good faith efforts for used vehicles, feasibility for remanufactured vehicles, and historic vehicles in a manner parallel to the way those same issues are revolved in the bus and van context. (With respect to the historic vehicles provision, please note the questions about the scope of this provision discussed under section 37.25, which may also apply in the rail context.) As an interim measure, before

the development of standards based on ATBCB guidelines, light and rapid rail vehicles will be viewed as accessible if they meet existing applicable requirements of 49 CFR part 609.

This subpart will eventually include facility and other requirements of the ADA as applied to light and rapid rail systems. Provisions on these subject will be proposed in a subsequent NPRM.

Subpart D—Intercity and Commuter Rail Service

With some exceptions (e.g., the application of accessibility requirements to a remanufactured vehicle whose life is extended for ten, rather than five, years), the requirements for vehicle acquisition for intercity and commuter rail systems parallel those for buses, vans and other vehicles, as well as for rapid and light rail vehicles. The regulatory requirements closely follow the statute, with the Department exercising its discretion on such issues as good faith efforts for used vehicles and feasibility for remanufactured vehicles in a manner parallel to the way those same issues are resolved in other parts of the regulation.

Again, the rule provides interim standards for commuter and intercity rail vehicle accessibility, pending the adoption of standards based on ATBCB guidelines. These standards are derived from the Department's existing section 504 rule (49 CFR 27.73(b)(2), as suggested by the Report of the House Committee on Energy and Commerce (H.Rept. 101–485, Pt. 4, at 46, 50). These standards are modified for intercity and commuter rail cars as provided in the text of the statute, as well as incorporating guidance from the House Committee on Energy and Commerce concerning the avoidance of requirements for widening aisles (*Id.*).

In § 37.87(b), there is a reference to compliance with § 242(a)(3) of the ADA. The ADA provides that single-level intercity rail passenger cars need comply with accessibility standards (set forth in § 37.87(a) of this rule) to the extent necessary to meet the "number of wheelchair spaces in a train" requirements of the cited statutory section. The accessible rest room and boarding requirements apply only to those coaches on which the required spaces are found.

This subpart will eventually include facility and other requirements of the ADA as applied to intercity and commuter rail systems. Provisions on these subjects will be proposed in a subsequent NPRM.

Regulatory Process Matters

This rule is a major rule under executive Order 12291. Cost pertaining to subpart B are estimated to be in the range of $72–78 million per year. An analysis of these costs, derived from a study prepared by the Department's consultant for a study of the impacts of the March 1990 NPRM, has been placed in the docket. The Department has not analyzed rail vehicle acquisition costs. Rail vehicle requirements must be in this rule since the statute requires the purchase of accessible rail vehicles after August 25, 1990. There is a good chance that these costs, which are imposed by the requirements of the ADA itself, would push the total annual cost of the rule over the $100 million threshold for a major rule. The rule is also significant under the Department's Regulatory Policies and Procedures.

The rule may have a significant impact on a substantial number of small entities, both public and private transit providers who will have to begin acquiring accessible vehicles. This impact is required by statute, however, and the Department does not have the discretion under the ADA to lessen the requirements. Likewise, there is a Federalism impact, in the sense that the statute, and hence the rule, decides vehicle acquisition issues that previously could be decided at the state or local level. Because this impact is required by the statute, a Federalism assessment, like a Regulatory Flexibility Analysis, is not necessary. Information collection requirements have been submitted to OMB for clearance under the Paperwork Reduction Act.

A number of provisions of this rule (e.g., pertaining to acquisition of vehicles by entities that do not receive UMTA funds and to rail systems) were not the subject of a previous notice and opportunity for public comment. These provisions pertain to provisions in the ADA that require regulated parties to acquire accessible vehicles after August 25, 1990. The Department has determined that it would be unnecessary, impracticable, and contrary to the public interest to postpone regulatory implementation of these statutory provisions in order to issue a proposed rule on these subjects. Likewise, the Department is making the entire final rule effective immediately, without the normal 30-day delayed effective date. The good cause for this reason is the same: the rule implements statutory mandates which have effect August 26, 1990, the postponement of the effective date of the rule would not postpone the obligation of the regulated parties to comply with the basic provisions of the rule. At the same time, regulated parties need definitive guidance concerning the details of implementing these requirements.

The Department is requesting comment for 90 days on the provisions of this rule. As discussed above, many of the provisions of this rule have already been the subject of notice and comment (i.e., provisions with respect to the acquisition of vehicles, and related issues, by recipients of UMTA financial assistance). Requirements with respect to private entities and others not receiving UMTA funds and requirements pertaining to rail systems have not previously been the subject of notice and comment. For the convenience of commenters, the Department will accept comments on all provisions of the rule, though the Department's focus in reviewing the comments will be on those areas which have not previously been the subject of comment. Unless it appears that immediate changes are necessary in one or more provisions, the Department intends to respond to this round of comments in the final ADA rule scheduled to be issued in July 1991.

List of Subjects in 49 CFR Part 37

Mass transportation, Railroads, Civil rights, Handicapped.

Issued this 28th day of September 1990, at Washington, DC.

Samuel K. Skinner,

Secretary of Transportation.

For the reasons set forth in the preamble, title 49 of the Code of Federal Regulations is amended to read as follows:

1. Part 37 of title 49, Code of Federal Regulations, is added to read as follows:

PART 37—TRANSPORTATION SERVICES FOR INDIVIDUALS WITH DISABILITIES

Subpart A—General

Subpart B—Bus, Van, and other Transportation Systems

Authority: Americans with Disabilities Act of 1990, Pub. L. 101–336; 49 U.S.C. 322.

Subpart A—General.

§ 37.1 Purpose.

The purpose of this part is to implement the transportation and related provisions of the Americans with Disabilities Act of 1990 (Pub. L. 101–336).

§ 37.3 Applicability.

(a) This part applies to the following entities, whether or not they receive Federal financial assistance from the Department of Transportation:

(1) Any public entity that provides designated public transportation or intercity or commuter rail transportation;

(2) Any private entity that provides specified public transportation; and

(3) Any private entity that is not in the principal business of transporting people but operates a demand responsive or fixed route system or otherwise transports individuals.

(b) Those who contract with a UMT Act recipient or other to provide designated public transportation or intercity or commuter rail transportation service (including a private entity which might otherwise be subject to the private entity provisions of this part) are subject to the public entity provisions of this part.

(c) For entities receiving Federal financial assistance from the Department of Transportation, compliance with applicable requirements of this part is a condition of receiving the financial assistance. This obligation is enforced under the provisions of 49 CFR part 27, not under this part.

§ 37.5 Definitions.

As used in this part:

"The Act" means the Americans with Disabilities Act of 1990 (Pub. L. 101–336), as it may be amended from time to time.

"Auxiliary aids and services" includes:

(a) Qualified interpreters or other methods of making aurally delivered materials available to individuals with hearing impairments;

(b) Qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments;

(c) Acquisition or modification of equipment or devices; or

(d) Other similar services or actions.

Commerce means travel, trade, transportation, or communication among the several states, between any foreign country or any territory or possession and any state, or between points in the same state but through another state or foreign country.

Commuter authority means any state, local, regional authority, corporation, or other entity established for purposes of providing commuter rail transportation (including, but not necessarily limited to, the New York Metropolitan Transportation Authority, the Connecticut Department of Transportation, the Maryland Department of Transportation, the Southeastern Pennsylvania Transportation Authority, the New Jersey Transit Corporation, the Massachusetts Bay Transportation Authority, the Port Authority Trans-Hudson Corporation, and any successor agencies) and any entity created by one or more such agencies for the purposes of operating, or contracting for the operation of, commuter rail transportation.

Commuter rail transportation means short-haul rail passenger service operating in metropolitan and suburban areas, whether within or across the geographical boundaries of a state, usually characterized by reduced fare, multiple ride, and commutation tickets and by morning and evening peak period operations. This term does not include light or rapid rail transportation.

Commuter rail car means a rail passenger car obtained by a commuter authority for use in commuter rail transportation.

Demand responsive system means any system of transporting individuals, including but not limited to providing designated public transportation service or specified public transportation service by vehicle at the request of the user, which is not a fixed route system.

Designated public transportation means transportation provided by a public entity (other than public school transportation) by bus, rail, or other conveyance (other than transportation by aircraft or intercity or commuter rail transportation) that provides the general public with general or special service, including charter service, on a regular and continuing basis.

Disability means, with respect to an individual—

(a) A permanent or temporary physical or mental impairment that substantially limits one or more of the major life functions of such individual. For purposes of this part, a physical or mental impairment means

(1) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory including speech organs, cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin, or endocrine; or

(2) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments; cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, drug addiction (but not including the current use of illegal drugs) and alcoholism. "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working; or

(b) A record of such an impairment. For purposes of this part, a record of an impairment means a history of, or classification or misclassification, as having a mental or physical impairment that substantially limits one or more major life activities; or

(c) Being regarded as having such an impairment. For purposes of this part, this term means

(1) Having a physical or mental impairment that does not substantially limit major life activities, but which is treated as constituting such a limitation;

(2) Having a physical or mental impairment that substantially limits a major life activity only as a result of the attitudes of others toward such an impairment; or

(3) Having none of the impairments set forth in this definition but being treated as having such an impairment.

Fixed route system means a system of transporting individuals (other than by aircraft), including but not limited to providing designated or specified public transportation services, on which a vehicle (including a bus, van, rail vehicle, or other vehicle) is operated along a prescribed route according to a fixed schedule and which does not involve an advance request by a passenger to ensure that service is provided.

Intercity rail transportation means transportation provided by the National Rail Passenger Corporation (Amtrak).

Intercity rail passenger car means a rail passenger car obtained by Amtrak for use in intercity rail transportation.

New vehicle means a vehicle which is offered for sale or lease after manufacture without any prior use.

Operates includes, with respect to a fixed route or demand responsive system, the provision of transportation service by the public entity itself or by a person under a contractual or other arrangement or relationship with a public entity.

Over-the-road bus means a vehicle characterized by an elevated passenger deck located over a baggage compartment.

Private entity means any entity other than a public entity.

Public entity means:

(a) Any state or local government;

(b) Any department, agency, special purpose district, or other instrumentality of one or more state or local governments; and

(c) The National Railroad Passenger Corporation (Amtrak) and any commuter authority.

Purchase or lease with respect to vehicles, means the time at which an entity is legally obligated to obtain the vehicles, such as the time of contract execution.

Public school transportation means transportation by schoolbus vehicles of schoolchildren, personnel, and equipment to and from a public elementary or secondary school and school-related activities.

Qualified individual with a disability means an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids or services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.

Remanufactured vehicle means a vehicle which has been structurally restored and has had new or rebuilt major components installed to extend its service life.

Secretary means the Secretary of Transportation or his/her designee.

Solicitation means the closing date for the submission of bids or offers in a procurement.

Specified public transportation means transportation by bus, rail, or any other conveyance (other than aircraft) provided by a private entity to the general public, with general or special service (including charter service) on a regular and continuing basis.

UMT Act means the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. App. 1601 *et seq.*).

Used vehicle means a vehicle with prior use that was originally purchased before June 26, 1990.

Vehicle as the term is applied to private entities, does not include a rail passenger car, railroad locomotive, railroad freight car, or railroad caboose, or other rail rolling stock described in section 242 or title III of the Act.

§ 37.7 Nondiscrimination; provision of service.

(a) No public or private entity shall discriminate against an individual with disabilities in connection with the provision of its transportation service for the general public.

(b) Notwithstanding the provision of any special service to individuals with disabilities, a public or private entity shall not, on the basis of disability, deny to any individual with a disability the opportunity to use the entity's transportation system for the general public, if the individual is capable of using that system.

(c) Each covered entity shall ensure that vehicles and equipment are capable of accommodating all the users for which the service is designed, and are maintained in proper operating condition.

(d) Each covered entity shall ensure that personnel are trained and supervised so that they operate vehicles and equipment safely and properly and treat individuals with disabilities who use the service in a courteous and respectful way.

(e) Each covered entity shall ensure that adequate assistance and information concerning the service is available to individuals with disabilities, including those with vision or hearing impairments. This obligation includes making adequate communications capacity to enable users to obtain information about and, with respect to demand responsive service, to schedule service. In the case of a fixed route system, this obligation includes providing information about bus routes and schedules and the accessibility of scheduled service.

(f) Each entity providing demand responsive service shall ensure that service is provided in a timely manner, in accordance with scheduled pickup times.

§§ 37.9–37.19 [Reserved]

Subpart B—Bus, Van, and Other Transportation Systems

§ 37.21 Purchase or lease of new vehicles by public entities operating fixed route systems.

(a) Except as provided elsewhere in this section, each public entity operating a fixed route system making a solicitation after August 25, 1990, to purchase or lease a new bus or other new vehicle for use on the system, shall ensure that the vehicle is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. Such a vehicle shall meet the requirements of § 37.31 of this subpart.

(b) A public entity may purchase or lease a new bus that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, if it applies for, and the UMTA Administrator grants, a waiver as provided for in this section.

(c) Before submitting a request for such a waiver, the public entity shall hold at least one public hearing concerning the proposed request.

(d) The UMTA Administrator may grant a request for such a waiver if the public entity demonstrates to the UMTA Administrator's satisfaction that—

(1) The initial solicitation for new buses made by the public entity specified that all new buses were to be lift-equipped and were to be otherwise accessible to and usable by individuals with disabilities;

(2) Hydraulic, electromechanical, or other lifts for such new buses could not be provided by any qualified lift manufacturer to the manufacturer of

such new buses in sufficient time to comply with the solicitation; and

(3) Any further delay in purchasing new buses necessary to obtain such lifts would significantly impair transportation services in the community served by the public entity.

(e) The public entity shall include with its waiver request a copy of the initial solicitation and written documentation from the bus manufacturer of its good faith efforts to obtain lifts in time to comply with the solicitation, and a full justification for the assertion that the delay in bus procurement needed to obtain a lift-equipped bus would significantly impair transportation services in the community. This documentation shall include a specific date at which the lifts could be supplied and copies of advertisements in trade publications and inquiries to trade associations seeking lifts.

(f) Any waiver granted by the UMTA Administrator under this section shall be subject to the following conditions:

(1) The waiver shall apply only to the particular bus delivery to which the waiver request pertains;

(2) The waiver shall include a termination date, which will be based on information concerning when lifts will become available for installation on the new buses the public entity is purchasing. Buses delivered after this date, even though procured under a solicitation to which a waiver applied, shall be equipped with lifts;

(3) Any bus obtained subject to the waiver shall be capable of accepting a lift, and the public entity shall install a lift as soon as one becomes available;

(4) Such other terms and conditions as the UMTA Administrator may impose.

(g)(1) When the UMTA Administrator grants a waiver under this section, he/she shall promptly notify the appropriate committees of Congress.

(2) If the UMTA Administrator has reasonable cause to believe that a public entity fraudulently applied for a waiver under this section, the UMTA Administrator shall:

(i) Cancel the waiver if it is still in effect; and

(ii) Take other appropriate action.

§ 37.23 Purchase or lease of used vehicles by public entities operating a fixed route system.

(a) Except as provided elsewhere in this section, each public entity operating a fixed route system purchasing or leasing, after August 25, 1990, a used bus or other used vehicle for use on the system, shall ensure that the vehicle is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. Such a vehicle shall meet the requirements of § 37.31 of this subpart.

(b) A public entity may purchase or lease a used vehicle for use on its fixed route system that is not readily accessible to and usable by individuals with disabilities if it makes demonstrated good faith efforts to obtain an accessible vehicle.

(c) Good faith efforts shall include at least the following steps:

(1) An initial solicitation for used vehicles specifying that all used vehicles are to be lift-equipped and otherwise accessible to and usable by individuals with disabilities, or, if an initial solicitation is not used, a documented communication so specifying;

(2) A nationwide search for accessible vehicles, involving specific inquiries to used vehicle dealers and other transit providers; and

(3) Advertising in trade publications and contacting trade associations.

(d) Each public entity purchasing or leasing used vehicles that are not readily accessible to and usable by individuals with handicaps shall retain documentation of the specific good faith efforts it made for two years from the date the vehicles were purchased. These records shall be made available, on request, to the UMTA Administrator and the public.

§ 37.25 Remanufacture of vehicles and purchase or lease of remanufactured vehicles by public entities operating fixed route systems.

(a) This section applies to any public entity operating a fixed route system which takes one of the following actions:

(1) After August 25, 1990, remanufactures a bus or other vehicle so as to extend its useful life for five years or more or makes a solicitation for such remanufacturing; or

(2) Purchases or leases a bus or other vehicle which has been remanufactured so as to extend its useful life for five years or more, where the purchase or lease occurs after August 25, 1990, and during the period in which the useful life of the vehicle is extended.

(b) Vehicles acquired through the actions listed in paragraph (a) of this section shall, to the maximum extent feasible, be readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as provided in § 37.31 of this subpart.

(c) For purposes of this section, it shall be considered feasible to remanufacture a bus or other motor so as to be readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, unless an engineering analysis demonstrates that including accessibility features required by § 37.31 of this subpart would have a significant adverse effect on the structural integrity of the vehicle.

(d) If a public entity operates a fixed route system, any segment of which is included on the National Register of Historic Places, and if making a vehicle of historic character used solely on such segment readily accessible to and usable by individuals with disabilities would significantly alter the historic character of such vehicle, the public entity has only to make (or purchase or lease a remanufactured vehicle with) those modifications to make the vehicle accessible which do not alter the historic character of such vehicle, in consultation with the National Register of Historic Places.

(e) Pending the issuance of regulations defining a vehicle of historic character, a public entity operating a fixed route system as described in paragraph (d) of this section may apply in writing to the UMTA Administrator for a determination of the historic character of the vehicle. The UMTA Administrator shall refer such requests to the National Register of Historic Places, and shall rely on its advice in making determinations of the historic character of the vehicle.

§ 37.27 Purchase or lease of new vehicles by public entities operating a demand responsive system for the general public.

(a) Except as provided in this section, a public entity operating a demand responsive system for the general public making a solicitation after August 25, 1990, to purchase or lease a new bus or other new vehicle for use on the system, shall ensure that the vehicle is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. Such a vehicle shall meet the requirements of § 37.31 of this subpart.

(b) If the system, when viewed in its entirety, provides a level of service to individuals with disabilities, including individuals who use wheelchairs, equivalent to the level of service it provides to individuals without disabilities, it may purchase new vehicles that are not readily accessible to and usable by individuals with disabilities.

(c) For purposes of this section, a demand responsive system, when viewed in its entirety, shall be deemed to provide equivalent service if the service available to individuals with disabilities, including wheelchair users, is provided in the most integrated

setting feasible and is equivalent to the service provided other individuals with respect to the following service characteristics:

(1) Response time;
(2) Fares;
(3) Geographic area of service;
(4) Hours and days of service;
(5) Restrictions based on trip purpose;
(6) Availability of information and reservations capability; and
(7) Any constraints on capacity or service availability.

(d) A public entity receiving UMTA funds under section 18 or 16(b)(2), or which does not receive UMTA funds, which determines that its service to individuals with disabilities is equivalent to that provided other persons, shall, prior to any procurement of an inaccessible vehicle, file with the appropriate state program office a certification that it provides equivalent service meeting the standards of paragraph (c) of this section. (Public entities operating demand responsive service receiving funds under any other section shall file the certification with the appropriate UMTA regional office.) Such a certification may be filed in connection with a particular procurement or in advance of a procurement; however, no certification shall be valid for more than one year. A copy of the required certification is found in the Appendix to this part.

(e) The waiver mechanism set forth in § 37.21 (b)–(h) of this subpart shall be available to public entities operating a demand responsive system for the general public.

§ 37.29 Purchase of Vehicles by Private Entities.

(a)(1) A private entity which is not primarily engaged in the business of transporting people, which operates a fixed route system, and which makes a solicitation after August 25, 1990, to purchase or lease a vehicle with a seating capacity in excess of 16 passengers (including the driver) for use on the system shall ensure that the vehicle is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. Such a vehicle shall meet the requirements of § 37.31 of this subpart.

(2) A private entity which is not primarily engaged in the business of transporting people and which operates a fixed route system shall not purchase or lease a vehicle, after August 25, 1990, with a seating capacity of 16 passengers or less (including the driver) for use on the system that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, and which meets the requirements of § 37.31 of this subpart, unless the system, when viewed in its entirety, ensures a level of service to individuals with disabilities, including individuals who use wheelchairs, equivalent to the level of service provided to individuals with disabilities. For purposes of this paragraph, a fixed route system, when viewed in its entirety, shall be deemed to provide equivalent service if the service available to individuals with disabilities, including wheelchair users, is provided in the most integrated setting feasible and is equivalent to the service provided other individuals with respect to the following service characteristics:

(i) Schedules/headways;
(ii) Fares;
(iii) Geographic area of service;
(iv) Hours and days of service;
(v) Availability of information; and
(vi) Any constraints on capacity or service availability.

(3) A private entity which is not primarily engaged in the business of transporting people and whose operations affect commerce, and which operates a demand responsive system, shall not make a solicitation, after August 25, 1990, to purchase or lease a new vehicle with a seating capacity in excess of 16 passengers (including the driver) for use on its system that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as provided in § 37.31 of this Subpart, unless its system, when viewed in its entirety, provides a level of service to individuals with disabilities, including individuals who use wheelchairs, that is equivalent to the level of service provided to individuals without disabilities. For purposes of this paragraph, this equivalent service requirement shall be deemed to have been met if service to individuals with disabilities is provided in the most integrated setting feasible and is the same as or fully equivalent to the service provided other individuals with respect to the following service characteristics:

(i) Response time;
(ii) Fares;
(iii) Geographic area of service;
(iv) Hours and days of service;
(v) Restrictions based on trip purpose;
(vi) Availability of information and reservations capability; and
(vii) Any constraints on capacity or service availability.

(b)(1) Except as provided in this paragraph, a private entity which is primarily engaged in transporting people and whose operations affect commerce, which makes a solicitation after August 25, 1990, to purchase or lease a new vehicle (other than an automobile, a van with a seating capacity of less than eight persons, including the driver, or an over-the-road bus) for use in providing specified public transportation on the system shall ensure that the vehicle is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. Such a vehicle shall meet the requirements of § 37.31 of this Subpart.

(2) The entity may purchase such a new vehicle that is not readily accessible to and usable by individuals with disabilities if the vehicle is to be used solely on a demand responsive system and the entity can demonstrate that the system, when viewed in its entirety, provides a level of service to individuals with disabilities, including individuals who use wheelchairs, equivalent to the level of service it provides to individuals without disabilities. For purposes of this paragraph, a demand responsive system, when viewed in its entirety, shall be deemed to provide equivalent service if the service available to individuals with disabilities, including wheelchair users, is provided in the most integrated setting feasible and is equivalent to the service provided other individuals with respect to the following service characteristics:

(i) Response time;
(ii) Fares;
(iii) Geographic area of service;
(iv) Hours and days of service;
(v) Restrictions based on trip purpose;
(vi) Availability of information and reservations capability; and
(vii) Any constraints on capacity or service availability.

(c)(1) Except as provided in this paragraph, a private entity which is primarily engaged in transporting people and whose operations affect commerce, which makes a solicitation after February 25, 1992, to purchase or lease a new van with a seating capacity of less than eight persons, including the driver, for use in providing specified public transportation on the entity's system shall ensure that the vehicle is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. Such a vehicle shall meet the requirements of § 37.31 of this Subpart.

(2) The entity may purchase such a new van that is not readily accessible to and usable by individuals with disabilities, if the system for which the van is being purchased or leased, when viewed in its entirety, provides a level of service to individuals with disabilities,

including individuals who use wheelchairs, equivalent to the level of service it provides to individuals without disabilities. For purposes of this paragraph, the system, when viewed in its entirety, shall be deemed to provide equivalent service if the service available to individuals with disabilities, including wheelchair users, is provided in the most integrated setting feasible and is the same as or fully equivalent to the service provided other individuals with respect to the following service characteristics:

(i) Response time (if the system is demand responsive) or schedules/headways (if the system is a fixed route system);

(ii) Fares;

(iii) Geographic area of service;

(iv) Hours and days of service;

(v) Restrictions based on trip purpose;

(vi) Availability of information and reservations capability; and

(vii) Any constraints on capacity or service availability.

(d) A private entity which is primarily engaged in transporting people and whose operations affect commerce, which makes a solicitation after February 25, 1992, to purchase or lease a new rail passenger car to be used in providing specified public transportation, shall ensure that the car is readily accessible to, and usable by, individuals with disabilities, including individuals who use wheelchairs. The accessibility standards of either § 37.57, 37.87, or 37.89 shall apply to such a car, depending on the type of service in which the car is to be used.

(e) Except as provided paragraph (f) of this section, a private entity which is primarily engaged in transporting people and whose operations affect commerce, which remanufactures a rail passenger car to be used in providing specified public transportation to extend its useful life for ten years or more, or purchases or leases such a remanufactured rail car, shall ensure that the rail car, to the maximum extent feasible, is made readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. For purposes of this paragraph, it shall be considered feasible to remanufacture a rail passenger car to be readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, unless an engineering analysis demonstrates that doing so would have a significant adverse effect on the structural integrity of the car.

(f) Compliance with paragraph (e) of this section is not required to the extent that it would significantly alter the historic or antiquated character of a historic or antiquated rail passenger car, or a rail station served exclusively by such cars, or would result in the violation of any rule, regulation, standard or order issued by the Secretary under the Federal Railroad Safety Act of 1970. For purposes of this section, a historic or antiquated rail passenger car means a rail passenger car—

(1) Which is not less than 30 years old at the time of its use for transporting individuals;

(2) The manufacturer of which is no longer in the business of manufacturing rail passenger cars; and

(3) Which—

(i) Has a consequential association with events or persons significant to the past; or

(ii) Embodies, or is being restored to embody, the distinctive characteristics of a type of rail passenger car used in the past, or to represent a time period which has passed.

§ 37.31 Interim standards for accessible vehicles.

(a) Pending the issuance of accessibility standards required by the Act, vehicles leased or purchased by public or private entities shall not be deemed readily accessible to and usable by individuals with disabilities, including individuals with wheelchairs, unless they meet the standards set forth in this section.

(b) The vehicle shall meet the requirements of 49 CFR 609.15(d)–(i);

(c) The vehicle shall be equipped with a lift or other level-change mechanism and shall have sufficient clearances to permit an individual using a wheelchair or other mobility device to reach a securement location;

(d) There shall be at least one securement location on the vehicle. The securement device(s) at the securement location shall be sufficient to secure any wheelchair or other mobility device which the vehicle's lift and clearances permit to enter the vehicle and proceed to the securement location.

§§ 37.33—37.49 [Reserved]

Subpart C—Rapid and Light Rail Systems

§ 37.51 Purchase or lease of new rail vehicles by public entities operating rapid or light rail systems.

Each public entity operating a rapid or light rail system making a solicitation after August 25, 1990, to purchase or lease a new rapid or light rail vehicle for use on the system shall ensure that the vehicle is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

§ 37.53 Purchase or lease of used rail vehicles by public entities operating rapid or light rail systems.

(a) Except as provided elsewhere in this section, each public entity operating a rapid or light rail system which, after August 25, 1990, purchases or leases a used rapid or light rail vehicle for use on the system shall ensure that the vehicle is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(b) A public entity may purchase or lease a used rapid or light rail vehicle for use on its rapid or light rail system that is not readily accessible to and usable by individuals if it makes demonstrated good faith efforts to obtain an accessible vehicle.

(c) Good faith efforts shall include at least the following steps:

(1) The initial solicitation for used vehicles made by the public entity specifying that all used vehicles were to be accessible to and usable by individuals with disabilities;

(2) A nationwide search for accessible vehicles, involving specific inquiries to manufacturers and other transit providers; and

(3) Advertising in trade publications and contacting trade associations.

(d) Each public entity purchasing or leasing used rapid or light rail vehicles that are not readily accessible to and usable by individuals with disabilities shall retain documentation of the specific good faith efforts it made for two years from the date the vehicles were purchased. These records shall be made available, on request, to the UMTA Administrator.

§ 37.55 Remanufacture of rail vehicles and purchase or lease of remanufactured rail vehicles by public entities operating rapid or light rail systems.

(a) This section applies to any public entity operating a rapid or light rail system which takes one of the following actions:

(1) After August 25, 1990, remanufactures a light or rapid rail vehicle so as to extend its useful life for five years or more or makes a solicitation for such remanufacturing;

(2) Purchases or leases a light or rapid rail vehicle which has been remanufactured so as to extend its useful life for five years or more, where the purchase or lease occurs after August 25, 1990, and during the period in which the useful life of the vehicle is extended.

(b) Vehicles acquired through the actions listed in paragraph (a) of this

section shall, to the maximum extent feasible, be readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as provided in § 37.57 of this subpart.

(c) For purposes of this section, it shall be considered feasible to remanufacture a rapid or light rail vehicle so as to be readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, unless an engineering analysis demonstrates that doing so would have a significant adverse effect on the structural integrity of the vehicle.

(d) If a public entity operates a rapid or light rail system any segment of which is included on the National Register of Historic Places and if making a rapid or light rail vehicle of historic character used solely on such segment readily accessible to and usable by individuals with disabilities would significantly alter the historic character of such vehicle, the public entity need only make (or purchase or lease a remanufactured vehicle with) those modifications that do not alter the historic character of such vehicle.

(e) Pending the issuance of regulations defining a rapid or light rail vehicle of historic character, a public entity operating a fixed route system as described in paragraph (d) of this section may apply in writing to the UMTA Administrator for a determination of the historic character of the vehicle. The UMTA Administrator shall make such determinations on a case by case basis, in consultation with the National Register of Historic Places.

§ 37.57 Interim accessibility standards for light and rapid rail vehicles.

Pending the issuance of accessibility standards for light and rapid rail vehicles required by the Act, light and rapid rail vehicles shall be deemed readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, for purposes of this subpart if they meet the requirements of 49 CFR 609.19 and 609.17, respectively.

§§ 37.59—37.79 [Reserved].

Subpart D—Intercity and Commuter Rail Systems

§ 37.81 Purchase or lease of new intercity and commuter rail cars.

Amtrak or a commuter authority making a solicitation after August 25, 1990, to purchase or lease a new intercity or commuter rail car for use on the system shall ensure that the vehicle is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. Such a vehicle shall meet the requirements of §§ 37.87 or 37.89 of this subpart, as applicable.

§ 37.83 Purchase or lease of used intercity and commuter rail cars.

(9) Except as provided elsewhere in this section, Amtrak or a commuter authority purchasing or leasing a used intercity or commuter rail car after August 25, 1990, shall ensure that the car is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. Such a vehicle shall meet the requirements of § 37.87 or § 37.89 of this subpart, as applicable.

(b) Amtrak or a commuter authority may purchase or lease a used intercity or commuter rail car that is not readily accessible to and usable by individuals if it makes demonstrated good faith efforts to obtain an accessible vehicle.

(c) Good faith efforts shall include at least the following steps:

(1) An initial solicitation for used vehicles specifying that all used vehicles accessible to and usable by individuals with disabilities;

(2) A nationwide search for accessible vehicles, involving specific inquiries to used vehicle dealers and other transit providers; and

(3) Advertising in trade publications and contacting trade associations.

(d) Amtrak and commuter authorities purchasing or leasing used intercity or commuter rail cars that are not readily accessible to and usable by individuals with disabilities shall retain documentation of the specific good faith efforts that were made for two years from the date the cars were purchased. These records shall be made available, on request, to the UMTA or FRA Administrator, as applicable.

§ 37.85 Remanufacture of intercity and commuter rail cars and purchase or lease of remanufactured intercity and commuter rail cars.

(a) This section applies to Amtrak or a commuter authority which takes one of the following actions:

(1) Remanufactures an intercity or commuter rail car so as to extend its useful life for ten years or more;

(2) Purchases or leases an intercity an intercity or commuter rail car which has been remanufactured so as to extend its useful life for ten years or more.

(b) Intercity and commuter rail cars listed in paragraph (a) of this section shall, to the maximum extent feasible, be readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as provided in § 37.87 or § 37.89 of this subpart, as applicable.

(c) For purposes of this section, it shall be considered feasible to remanufacture an intercity or commuter rail car so as to be readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, unless an engineering analysis demonstrates that including accessibility features required by §§ 37.87 or 37.89 of this subpart, as applicable, would have a significant adverse effect on the structural integrity of the car.

§ 37.87 Interim accessibility standards for intercity rail passenger cars.

(a) Pending the issuance of regulations under section 244 of the ADA, and except as provided in this section, intercity rail passenger cars shall meet the following standards to be considered readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs:

(1) The car shall be able to be entered from the station platform by an individual who uses a wheelchair or other mobility device;

(2) The car shall include space to park and secure one or two (but not more than two) wheelchairs to accommodate persons who wish to remain in their wheelchairs, and space to fold and store one or two (but not more than two) wheelchairs to accommodate individuals who wish to sit in coach seats;

(3) The car shall include an accessible rest room with a wide doorway, bars to assist the individual in transferring from wheelchair to toilet, low sinks, and other appropriate modifications. The rest room shall be large enough to accommodate a wheelchair (including maneuvering room);

(4) The design and construction of the car shall be accessible to individuals with disabilities, including but not limited to individuals using wheelchairs, and shall display the international accessibility symbol at each entrance;

(5) Widening of aisles or passageways in the car to accommodate wheelchairs is not required.

(b) Single-level passenger coaches (including food service cars) are required to comply with the requirements of paragraphs (a)(1)–(4) of this section only to the extent necessary to ensure compliance with the requirements of sections 242(a)(3) of the ADA.

(c) Single level dining cars shall not be required to be able to be entered from the station platform by an individual who uses a wheelchair or to have a rest

room usable by an individual who uses a wheelchair if no rest room is provided in such car for any passenger.

(d) Bi-level dining cars shall not be required to meet the requirements of paragraphs (a)(1)–(4) of this section.

§ 37.69 Interim accessibility standards for commuter rail cars.

Pending the issuance of regulations under section 244 of the Act, and except as provided in this section, commuter rail cars shall meet the following standards in order to be considered readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs:

(a) The car shall be able to be entered from the station platform by an individual who uses a wheelchair or other mobility device;

(b) The car shall include space to park and secure one or more wheelchairs to accommodate persons who wish to remain in their wheelchairs;

(c) If a rest room is provided for passengers in the car, the car shall include an accessible rest room with a wide doorway, bars to assist the individual in transferring from wheelchair to toilet, low sinks, and other appropriate modifications. The rest room shall be large enough to accommodate wheelchairs (including maneuvering room);

(d) The design and construction of the car shall be accessible to individuals with disabilities, including but not limited to individuals using wheelchairs, and shall display the international accessibility symbol at each entrance;

(e) Widening of aisles or passageways in the car to accommodate wheelchairs is not required.

§§ 37.91–37.111 [Reserved]

Appendix to Part 37

Certification of Equivalent Service

The _____ (name of agency) certifies that its demand responsive service offered to individuals with disabilities, including individuals who use wheelchairs, is equivalent to the level and quality of service offered to individuals without disabilities. Such service, when viewed in its entirety, is provided in the most integrated setting feasible and is equivalent with respect to:

(1) Response time;

(2) Fares;

(3) Geographic service area;

(4) Hours and days of service;

(5) Restrictions on trip purpose;

(6) Availability of information and reservation capability; and

(7) Constraints on capacity or service availability.

In accordance with 49 CFR 37.27, public entities operating demand responsive systems for the general public which receive financial assistance under sections 18(b)(2) or 18 of the Urban Mass Transportation Act) must file this certification with the appropriate state program office before procuring any inaccessible vehicle. Such public entities not receiving UMTA funds shall also file the certification with the appropriate state program office. Such public entities receiving UMTA funds under any other section of the UMT Act must file the certification with the appropriate UMTA regional office. This certification is valid for no longer than one year from its date of filing.

(name of authorized official)

(signature)

(title)

(date)

[FR Doc. 90–23439 Filed 10–3–90; 8:45 am]

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federal register

Thursday
October 4, 1990

Part IV

The President

Proclamation 6192—Energy Awareness Month, 1990

Federal Register
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Presidential Documents

Title 3—

The President

Proclamation 6192 of October 2, 1990

Energy Awareness Month, 1990

By the President of the United States of America

A Proclamation

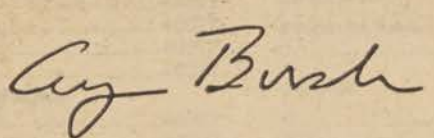
Each day we rely on stable and secure supplies of energy—for our homes and motor vehicles, as well as for our farms, factories, and other places of work. By supplying consumers with needed heat, light, and power, our Nation's utility companies and other energy providers enable us to enjoy an enviably high standard of living and personal mobility. However, safe, reliable, and affordable sources of energy are more than a matter of comfort and convenience. They are also vital to America's economic productivity, its technological progress, and our national security.

As current events in the Persian Gulf region have so forcefully reminded us, we must skillfully balance our determination to sustain economic growth; our need to use energy efficiently and to reduce this country's dependence on oil; and our commitment to a safer, cleaner environment. Ensuring a secure energy future for the United States will require the wise and effective development of all our Nation's energy resources, including coal, natural gas, and nuclear and hydroelectric power, and other forms of renewable energy. It will require the creation of new incentives for oil and gas exploration and the development of alternative fuels; and it will call for innovative conservation efforts.

During its observance of "Energy Awareness Month," the United States Department of Energy will be working to promote increased public understanding of our Nation's energy needs and the energy choices available to us. Through the cooperative efforts of energy providers, educators, business and community leaders, individual consumers, and public officials at all levels of government, we can develop the sound energy policies and practices that are vital to our Nation's future.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim October 1990 as Energy Awareness Month. I urge the people of the United States to observe this month with appropriate educational programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this second day of October, in the year of our Lord nineteen hundred and ninety, and of the Independence of the United States of America the two hundred and fifteenth.



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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 523-6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

H.R. 5747/Pub. L. 101-402

To provide for the temporary extension of certain programs relating to housing and community development, and for other purposes. (Oct. 1, 1990; 104 Stat. 866; 1 page) Price: $1.00

H.J. Res. 655/Pub. L. 101-403

Making continuing appropriations for the fiscal year 1991, supplemental appropriations for "Operation Desert Shield" for the fiscal year 1990, and for other purposes. (Oct. 1, 1990; 104 Stat. 867; 8 pages) Price: $1.00